COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF

THE JOINT APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC. AND INTER-COUNTY ENERGY CORPORATION FOR APPROVAL OF AN INDUSTRIAL POWER AGREEMENT WITH ECONOMIC DEVELOPMENT RIDER AND RENEWABLE ENERGY PURCHASES	))))))	CASE NO. 2020-00193

JOINT VERIFIED APPLICATION

Comes now East Kentucky Power Cooperative, Inc. ("EKPC") and Inter-County Energy Cooperative, Inc. ("Inter-County") (collectively, the "Joint Applicants"), by counsel, pursuant to KRS 278.030(1), KRS 278.040(2), 807 KAR 5:001 Section 14 and 807 KAR 5:011, and other applicable law, and do hereby jointly request the Commission's approval of an Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases ("Agreement") with Diageo Americas Supply, Inc. ("Diageo"),[1] and for all other necessary approvals, respectfully stating as follows:

I. INTRODUCTION

1. The Joint Applicants are pleased to present for the Commission's review and approval an economic development rate project that represents a significant investment in the Lebanon, Kentucky community. This investment, made by Diageo, will create many new jobs and significantly expand the tax base. The Agreement submitted for the Commission's

[1] A copy of the Agreement, dated May 28, 2020, is attached hereto and incorporated herein as Exhibit 1. The Agreement will become effective upon the date of the Commission's Order approving same.

consideration is unique in that, in addition to including economic development rates, it also includes terms taken from the Joint Applicants' recently approved green energy tariffs. By combining multiple available tariff provisions, the Joint Applicants have helped Diageo achieve its corporate sustainability goals while further adding to the portfolio of manufacturers supporting one of Kentucky's signature industries.

A. Parties and Filing Requirements

1. East Kentucky Power Cooperative, Inc.

2. EKPC is a not-for-profit, rural electric cooperative corporation established under KRS Chapter 279 with its headquarters in Winchester, Kentucky. Pursuant to various agreements, EKPC provides electric generation capacity and electric energy to its sixteen (16) Owner-Member Cooperatives ("owner-members"), which in turn serve approximately 535,000 Kentucky homes, farms and commercial and industrial establishments in eighty-seven (87) Kentucky counties. EKPC's Board has stated its strategic objective is to maintain a generation fleet that prudently diversifies its fuel sources while maximizing its capital investments and minimizing stranded assets. EKPC is a "utility" as that term is defined in KRS 278.010(3)(a) and a "generation and transmission cooperative" as that term is defined in KRS 278.010(9).

3. In total, EKPC owns and operates approximately 2,965 MW of net summer generating capability and 3,267 MW of net winter generating capability. EKPC owns and operates coal-fired generation at the John S. Cooper Station in Pulaski County, Kentucky (341 MW) and the Hugh L. Spurlock Station (1,346 MW). EKPC also owns and operates natural gas-fired generation at the J. K. Smith Station in Clark County, Kentucky (753 MW (summer)/989 MW (winter)) and the Bluegrass Station in Oldham County, Kentucky (501 MW (summer)/567 MW (winter)), landfill gas-to-energy facilities in Boone County, Laurel County, Greenup County,

Hardin County, Pendleton County and Barren County (16 MW total), and a Community Solar facility (8 MW) in Winchester, Kentucky. Finally, EKPC purchases hydropower from the Southeastern Power Administration at Laurel Dam in Laurel County, Kentucky (70 MW), and the Cumberland River system of dams in Kentucky and Tennessee (100 MW). EKPC's record peak demand of 3,507 MW occurred on February 20, 2015.

4. EKPC owns 2,967 circuit miles of high voltage transmission lines in various voltages. EKPC also owns the substations necessary to support this transmission line infrastructure. Currently, EKPC has seventy-four (74) free-flowing interconnections with its neighboring utilities. EKPC's transmission system is operated by PJM Interconnection, LLC ("PJM"), of which EKPC has been a fully integrated member since June 1, 2013. PJM is a regional electric grid and market operator with operational control of over 180,000 MW of regional electric generation. It operates the largest capacity and energy market in North America.

2. Inter-County Energy Corporation

5. Inter-County is a not-for-profit, member-owned, rural electric distribution cooperative organized under KRS Chapter 279. Inter-County is engaged in the business of distributing retail electric power to approximately 26,000 members in the Kentucky counties of Boyle, Casey, Garrard, Larue, Lincoln, Madison, Marion, Mercer, Nelson, Rockcastle, Taylor and Washington Counties. It maintains 3,985 miles of distribution lines and has a member density of approximately 6.6 members per mile. Inter-County is a "utility" as that term is defined in KRS 278.010(3)(a), as well as a "distribution cooperative" under KRS 278.010(10) and a "retail electric supplier" under KRS 278.010(4). Inter-County is one of the sixteen (16) Owner-Members of EKPC.

3. Filing Requirements

6. Pursuant to 807 KAR 5:001 Section 14(1), EKPC's mailing address is P.O. Box 707, Winchester, Kentucky 40392-0707. EKPC's electronic mail address to receive service is psc@ekpc.coop. Inter-County's mailing address is 1009 Hustonville Road, Danville, Kentucky, 40422 and its electronic mail address is psc@intercountyenergy.net. Joint Applicants' counsel should be served at: david@gosssamfordlaw.com and allyson@gosssamfordlaw.com.

7. Pursuant to 807 KAR 5:001, Section 14(1), the grounds for Joint Applicants' request for approval of the Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases are set forth herein.

8. Pursuant to 807 KAR 5:001, Section 14(2), EKPC is a Kentucky corporation, in good standing, and was incorporated on July 9, 1941. Inter-County was incorporated on June 14, 1937 and is also a Kentucky corporation in good standing.

B. The Lebanon Project

9. Diageo Americas Supply, Inc. is part of larger corporate family that all falls under the leadership of Diageo, plc, a company based in London in the United Kingdom. Diageo, PLC is a global leader in beverage alcohol with a collection of iconic brands including Johnnie Walker, Crown Royal, Bulleit and Buchanan's whiskies, Smirnoff, Cîroc and Ketel One vodkas, Captain Morgan, Baileys, Don Julio, Tanqueray and Guinness. Diageo, plc is listed on both the New York Stock Exchange (NYSE: DEO) and the London Stock Exchange (LSE: DGE) and its products are sold in more than 180 countries around the world. The company's economic impact in North America is significant with ten (10) domestic production facilities across the United States, Canada and the US Virgin Islands. The company employs approximately 2,600 employees and spends more than $800 million a year on goods and services, all while making major investments in

innovation and sustainability. Diageo Americas Supply, Inc. is no stranger to Kentucky as it already owns and operates a large distillery near Shelbyville, Kentucky.

10. Diageo proposes to build a distillery in the Ky. Hwy. 208 Industrial Park near the City of Lebanon in Marion County, Kentucky (the "Lebanon Project"). The Lebanon Project represents a significant expansion of Diageo's Kentucky presence and will supplement the company's existing distillery in Shelby County, Kentucky. The Lebanon Project represents an approximate investment of $130 million and will create several dozen construction jobs and approximately thirty (30) permanent jobs. The Lebanon Project has a contract demand of 32 MWs, once fully operational. In furtherance of Diageo's corporate sustainability goals, the fully operational Lebanon Project will obtain one hundred percent (100%) of its forecasted energy requirements from renewable sources – either the purchase of renewable energy or the purchase and retirement of renewable energy credits ("RECs"). The Lebanon Project is expected to begin initial operations in early 2021 with full-scale operations occurring in July 2021.

11. A critical element of this matter is helping Diageo to achieve its sustainability goals without shifting costs to others. To accomplish this, it is important to understand how Diageo's business relies on the careful stewardship of natural resources from "grain to glass" for its long-term success. From the fields in which raw materials are grown, to the water and energy used to make its products, Diageo depends on resources that it shares with the communities around it – just as Diageo also shares the impacts that result from these resources becoming constrained. Accordingly, Diageo is committed to addressing the following environmental challenges: climate change, water scarcity, soil degradation and the loss of biodiversity. Diageo is working, for its own benefit, as well as for the future of those around it, to use natural resources efficiently across the company's whole value chain and, wherever possible, have a positive impact on the environment.

Diageo prides itself on having relied upon responsible environmental stewardship for generations. Nonetheless, the company continues to strive towards building on its longstanding commitment to preserving the natural environment, to ensure the continuing viability of the resources and communities that help it create value.

12. In light of the substantial job creation and capital investment for this new load, Diageo has requested to avail itself of the economic development rates afforded under the Joint Applicants' respective tariffs.[2]

II. The Agreement

13. Helping Diageo achieve its corporate environmental stewardship objective requires utilization of an innovative combination of several existing tariffed rates to develop a tailored structure that best serves Diageo's needs without harming the rates or service of others. Power will be supplied to Diageo by Inter-County pursuant to its Rate G – Large Industrial Customer; Rate Renewable Energy Program; Rate CS – Community Solar Power Generation; and Rate Economic Development Rider. Power will be supplied to Inter-County Energy by EKPC under EKPC's Rate G – Special Electric Contract Rate; Rate H – Wholesale Renewable Energy Program; Rate CS – Community Solar; and Rate EDR – Economic Development Rider. The Lebanon Project is the first time that EKPC and Inter-County have been able to combine these existing rate mechanisms into a single agreement. This represents a significant step forward in the Joint Applicants' efforts to provide optimally tariffed service to customers with specific sustainability goals without creating subsidization by non-participating members. Moreover, the addition of the Lebanon Project's load to the EKPC system will benefit EKPC's Owner-Members, Inter-County's retail members and the Lebanon community as a whole.

[2] A copy of Diageo's request is attached hereto and incorporated herein as Exhibit 2.

A. Purchase of Renewable Energy Pursuant to the Green Energy Tariff

14. Diageo's goal is to supply one hundred percent (100%) of the Lebanon Facility's forecasted energy requirements with renewable energy and REC purchases. This goal will be achieved through multiple complimentary strategies involving service under both EKPC's Rate H – Wholesale Renewable Energy Program and Rate CS – Community Solar and Inter-County's Rate Renewable Energy Program and Rate CS – Community Solar Power Generation. The strategy for utilizing these rates as Diageo commissions the Lebanon Facility and later begins full-scale production is carefully balanced.

15. For the period when Diageo begins production (estimated to be early 2021) through the end of its first year of full operations (June 30, 2022), Diageo's renewable energy consumption requirements shall be covered by the purchase and retirement of RECs in accordance with "Option A" of EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County's Rate Renewable Energy Program. For the twelve-month period covering July 1, 2022 through June 30, 2023, Diageo will purchase at least 42,000 MWhrs from power purchase agreements or physical renewable resources under "Option B" of EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County's Rate Renewable Energy Program with the balance of its renewable energy consumption requirement covered through the purchase of RECs. From July 1, 2023 through the end of the Initial Term of the Agreement, Diageo will annually purchase at least 105,000 MWhrs from power purchase agreements or physical renewable resources under "Option B" with the balance of its renewable energy consumption requirement supplied by the purchase of RECs. Throughout this period, Diageo will be a significant subscriber to EKPC's existing Community Solar One project beginning on the effective date of the Agreement.

16. By subscribing to Community Solar One and purchasing RECs for the initial eighteen (18) months of operations, Diageo is afforded the opportunity to tune its system and the Joint Applicants have adequate time to conduct a bidding process to identify the best source of renewable energy for Diageo's needs. Importantly, the Agreement includes early termination and performance assurance obligations to assure that EKPC's Owner-Members and Inter-County's retail members are held harmless from any failure to perform or early termination by Diageo. Moreover, the terms of EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County's Rate Renewable Energy Program are specifically designed to prevent cross-subsidization.

B. Incentives Pursuant to the Economic Development Rider

17. The Commission approved the use of economic development rates in an Order entered in Administrative Case 327,[3] and the Kentucky Supreme Court expressly affirmed the use of such rate mechanisms.[4] The Lebanon Project is exactly the type of project for which economic development rates were developed.[5] Accordingly, the Agreement includes provisions applying EKPC's Rate EDR – Economic Development Rider and Inter-County's Economic Development Rider tariff to Inter-County's Rate G – Large Industrial Customer and EKPC's Rate G – Special Electric Contract Rate. The Commission's Order in Administrative Case 327 includes fifteen separate findings regarding the parameters of the use of economic development rates, and these

[3] *See In the Matter of An Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities*, Order, Administrative Case No. 327 (Ky. P.S.C. Sept. 24, 1990).

[4] *See Public Service Comm'n of Ky. v. Com. of Ky., ex. rel. Conway*, 320 S.W.3d 660, 669 (Ky. 2010).

[5] EKPC's Rate EDR – Economic Development Rider was approved in Case No. 2014-00034. *See In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of an Economic Development Rider*, Order, Case No. 2014-00034 (Ky. P.S.C. June 20, 2014). Inter-County's current Economic Development Rate tariff was approved August 31, 2019.

findings are each addressed in direct testimony that is attached to this Application.[6] However, the Order in Administrative Case 327 directs special attention to certain issues regarding the content of any EDR agreement, which are addressed herein.

1. Adequate Reserves Margin

18. The Commission's Order in Administrative Case 327 states:

> The Commission finds that EDRs should only be offered during periods of excess capacity and that each utility should demonstrate, upon submission of each EDR contract, that the load expected to be served during each year of the contract period will not cause the utility to fall below a reserve margin that is considered essential for system reliability. Such a reserve margin should be identified and justified with each EDR contract filing.[7]

19. EKPC's reserve margins are derivative of its participation in the capacity market operated by PJM. As the Commission is aware, PJM maintains an Installed Reserve Margin ("'IRM'") requirement that is typically around fifteen percent (15%) of its summer peak and EKPC is required to maintain *or* purchase its pro-rata share of this IRM. The diversity of EKPC's load as compared to the PJM load provides additional margin for EKPC. That is, the EKPC load at the time of the PJM peak is typically less than the EKPC peak load. Therefore, EKPC's relative percentage of reserve margin that it carries on its peak load is significantly less than the overall PJM IRM. The typical EKPC capacity requirement, as defined by PJM, represents close to a three percent (3%) reserve margin on the EKPC projected summer peak. EKPC showed the expected required reserve margins based on this estimation in its 2019 Integrated Resource Plan, which is currently pending.[8] As a participant in the PJM markets, EKPC sells all its generating resources

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[6] *See* Direct Testimony of David Crews, Senior Vice President of Power Supply for EKPC, which is attached hereto and incorporated herein as Exhibit 3.

[7] *See* Order, Admin. Case No. 327, pp. 4-5.

[8] *See In the Matter of the Electronic 2019 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Case No. 2019-00096 (filed April 1, 2019).

into the market and purchases all its load requirements, including the reserve margin. Based on current conditions, EKPC does not believe it will be necessary to make a specific market purchase to cover the new demand created by the Lebanon Project during the Agreement's term. However, Paragraph 5(c) of the Agreement includes a provision to address a specific capacity market purchase, if needed.

2. Cost Recovery

20. The Order in Administrative Case 327 also addresses the subject of variable cost recovery, finding that it is "a fundamental requirement of EDRs."[9] Here, the Agreement is structured such that both Inter-County and EKPC will recover all variable costs associated with providing electric energy to the Lebanon Project and additional incremental revenues will contribute to both utilities' fixed costs that would otherwise have been paid by EKPC's other Owner-Members and Inter-County's retail members. Over time, this contribution results in lower costs for all ratepayers as the Joint Applicants' fixed costs are spread over a larger total load.

21. The Agreement also provides for full recovery of the marginal cost (both energy and capacity) associated with serving the Lebanon Project. As a member of PJM, EKPC's marginal cost to serve Inter-County and its other Owner-Members is identical to the costs incurred when purchasing its load requirements from the market. In support of the Application, EKPC is attaching a current analysis of its marginal costs for the twelve-month period ending May 31, 2020, which demonstrates that EKPC's marginal costs are fully recovered.[10]

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[9] *See* Order, Admin. Case No. 327, p. 8.

[10] *See* Exhibit 4, which is attached hereto and incorporated herein.

3. Customer Specific Fixed Costs

22. Another consideration is the extent to which customer specific fixed costs are recovered as part of an EDR agreement. As the Commission found, "all EDR contracts should include a provision allowing for the recovery of customer-specific fixed costs over the term of the contract."[11] This requirement is satisfied in Paragraph 5(d) of the Agreement.

4. Discount Period in Relation to Contract Term

23. The Order in Administrative Case No. 327 also includes specific guidance as to the length of both an EDR discount period and contract term:

> The Commission concurs with these participating utilities and finds that an EDR contract should extend for a period twice the length of the discount period. Furthermore, the discount period should not extend beyond five years. During the second half of an EDR contract, the rates charged to the customer should be identical to those contained in a standard rate schedule that is applicable to the customer's rate class and usage characterizations.[12]

24. In this instance, the discount period for the economic development rates will be five years, beginning with the first complete billing month occurring on or after July 1, 2022. Diageo is using a five-year discount period, so a term of at least ten years is required. However, the initial term of the Agreement is for fifteen years, which amply satisfies the Commission's requirement. During the balance of the Agreement's initial term, Diageo will be charged the rates set forth in Inter-County's Rate G – Large Industrial Customer. While there are no indications that Diageo would somehow be unable to perform throughout the full term of the Agreement, stepped-reductions to the demand charges during the discount period are significant. Moreover, a robust

[11] *See* Order, Admin. Case No. 327, p. 10.

[12] *Id.*, p. 23.

termination provision specific to the EDR component of the Agreement is included, which further encourages Diageo to fulfill the complete contract term.

5. Annual Reporting

25. The Commission noted in Administrative Case 327 that the filing of an annual report was an important aspect of its role in assuring that EDRs were used appropriately and fulfilled their intended purpose. The was affirmed in the Commission's Order in Case No. 2014-00034 and Case No. 2016-00316.[13] EKPC commits to filing an annual report – to be filed at the same time as its other annual EDR reports – which fully complies with the Commission's prior reporting instructions.

6. Other Requirements

26. The Joint Applicants acknowledge the other requirements set forth in the Commission's Order in Administrative Case 327 and states that they are addressed in the attached direct testimony of Mr. Crews.

B. Community Benefits

1. Positive Local Impact

27. Administrative Case 327 makes it clear that the Commission will look beyond the four corners of an EDR contract when evaluating a proposal. Indeed, the impact of the new investment and job creation on the community is also an important consideration:

> In its review of EDR contracts, the Commission will not only consider the customer's load which is eligible for an EDR, but also the number of new jobs, amount of new capital investment, and the general economic benefits associated with the new or expanding load. In its review of EDR contracts, the Commission will not only consider the customer's load which is eligible for an EDR, but also

[13] *See In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of an Industrial Power Agreement with Economic Development Rider*, Order, Case No. 2014-00034 (Ky. P.S.C. June 20, 2014); *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of an Industrial Power Agreement with Economic Development Rider,* Order, Case No. 2016-00316 (Ky. P.S.C. Nov. 21, 2016).

> the number of new jobs, amount of new capital investment, and the general economic benefits associated with the new or expanding load.[14]

28. The Lebanon Project will have a significant positive impact upon the local community by creating several dozen construction jobs and approximately thirty (30) permanent jobs once production is fully underway. These jobs will translate into higher occupational licenses taxes for the community. Moreover, with a total investment of approximately $130 million, the Lebanon Project will add significant value to the local property tax base. As a distiller of alcohol beverages, Diageo will also be subject to additional wholesale, retail and excise taxes applicable to alcohol producers. All of this will inure to the benefit of local schools, local agencies and state government. Diageo will be a constructive partner in the local community and will provide a financial engine to generate greater overall economic activity. The community benefits of the Lebanon Project are clear and manifest.

2. Comments from the Kentucky Economic Development Cabinet

29. The Commission reiterated in Administrative Case 327 that the Kentucky Economic Development Cabinet ("Cabinet") plays a pivotal role in helping attract job creation and investment to Kentucky. In light of this, the Commission found that it was advisable to afford the Cabinet an opportunity to opine on EDR proposals:

> The Commission acknowledges that Cabinet officials are experienced in dealing with economic development issues as they pertain to Kentucky communities…. The Commission believes that comments submitted by the Cabinet pertaining to EDR contracts filed by utilities may be helpful and pertinent…. Hence, in order to be sufficiently reviewed and considered by the Commission, any written comments prepared by the Cabinet or other interested parties pertaining to an EDR contract filed by a utility must be received by

[14] Order, Admin. Case No. 327, p. 20.

> the Commission no more than 20 days after the filing of an EDR contract.[15]

30. To facilitate any comments which the Cabinet might wish to file, the Joint Applicants are providing a copy of this Application to the Cabinet as well as the Office of the Attorney General.

C. Request for Approval by November 30, 2020

31. So that the parties to the Agreement can move forward with planning for the Lebanon Project and securing necessary equipment, the Joint Applicants respectfully request that the Commission issue an order approving the Agreement by November 30, 2020.

III. Overview of Testimony

32. In further support of its Application, the Joint Applicants are tendering herewith the direct testimony of David Crews, EKPC's Senior Vice President of Power Supply. The testimony addresses each of the findings in the Commission's Final Order in Administrative Case 327 and recent Commission precedent, as well as other important considerations relevant to the Application.

IV. Conclusion

33. The Lebanon Project presents a unique opportunity to combine several features of the Joint Applicants' tariffs to provide a new customer with a tailored solution to accomplish important sustainability objectives without shifting costs to non-participating customers. The Agreement is a fair, just and reasonable special contract that will benefit not only Diageo, but also the local community and the Joint Applicants' other members. The Joint Applicants are pleased to present this special contract to the Commission for review and approval.

[15] *Id*. p. 24.

WHEREFORE, on the basis of the foregoing, EKPC and Inter-County do hereby respectfully request to the Commission to:

1) Approve the Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases between EKPC, Inter-County and Diageo on or before November 30, 2020; and

2) Grant all other relief to which the Joint Applicants may be entitled.

This 26th day of June, 2020.

Respectfully submitted,

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Counsel for East Kentucky Power Cooperative, Inc. and Inter-County Energy Cooperative, Inc.

VERIFICATION

COMMONWEALTH OF KENTUCKY)
COUNTY OF CLARK)

Comes now David Crews, EKPC's Senior Vice President of Power Supply, in his official capacity, and, after being duly sworn, does hereby swear and affirm that the foregoing Joint Application and attached Direct Testimony and averments set forth therein are true and correct to the best of his knowledge and belief as of this 26 day of June 2020.

David Crews
Senior Vice President of Power Supply
East Kentucky Power Cooperative, Inc.

Signed before me, the NOTARY PUBLIC, by David Crews, Senior Vice President of Power Supply of East Kentucky Power Cooperative, Inc., after being duly sworn, on this 26th day of June 2020.

DAVID S. SAMFORD NOTARY PUBLIC STATE AT LARGE, KENTUCKY

NOTARY PUBLIC

Commission #: 561230

My Commission Expires: 7/23/20

VERIFICATION

COMMONWEALTH OF KENTUCKY)
COUNTY OF BOYLE)

Comes Jerry Carter, President and Chief Executive Officer of Inter-County Energy Cooperative Corporation, in his official capacity, and, after being duly sworn, does hereby swear and affirm that the foregoing Joint Application and averments set forth therein are true and correct to the best of his knowledge and belief as of this 22nd day of June 2020.

Jerry W. Carter

Jerry Carter
President and Chief Executive Officer
Inter-County Energy Cooperative Corporation

Signed before me, the NOTARY PUBLIC, by Jerry Carter, President and Chief Executive Officer of Inter-County Energy Cooperative Corporation, after being duly sworn, on this 22nd day of June 2020.

FARRAH COLEMAN
My Commission Expires 08-24-2021
NOTARY PUBLIC
Notary ID # 583751
STATE AT LARGE, KENTUCKY

Farrah Coleman

NOTARY PUBLIC

Commission #: 583751

My Commission Expires: 8-24-2021

INDEX OF EXHIBITS

Exhibit 1 – Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases, dated May 28, 2020.

Exhibit 2 – Request for Service Under EKPC's Rate EDR – Economic Development Rider and Inter-County's Rate Economic Development Rider, dated May 15, 2020.

Exhibit 3 – Direct Testimony of David Crews

Exhibit 4 – Marginal Cost Analysis (May 31, 2020)

Case No. 2020-00193
Exhibit 1

Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases, dated May 28, 2020

INDUSTRIAL POWER AGREEMENT

WITH ECONOMIC DEVELOPMENT RIDER

AND

RENEWABLE ENERGY PURCHASES

THIS AGREEMENT, made and entered into this 28th day of May, 2020, by and between **East Kentucky Power Cooperative, Inc**., a Kentucky corporation with its principal offices at 4775 Lexington Road, Winchester, Kentucky 40391 ("EKPC"), **Inter-County Energy Cooperative Corporation**, a Kentucky corporation with its principal offices at 1009 Hustonville Road, Danville, Kentucky 40422 ("Cooperative"); and **Diageo Americas Supply, Inc.**, a Delaware corporation with its principal offices at 3 World Trade Center, 175 Greenwich Street, New York, New York 10007 ("Customer").

W I T N E S S E T H:

WHEREAS, Cooperative is a rural electric cooperative corporation providing retail electric service in Marion County, Kentucky; and

WHEREAS, Cooperative is a member of EKPC and purchases all its wholesale electric power and energy requirements from EKPC pursuant to a Wholesale Power Contract dated October 1, 1964; and

WHEREAS, Customer is a member of Cooperative and purchases, or desires to purchase, retail electric power and energy needs from Cooperative, under the terms and conditions contained herein, to serve its Marion County, Kentucky distillery, warehouses and associated structures and appurtenances (hereinafter referred to as its "Facility"); and

WHEREAS, as part of the Customer's commitment to protecting and preserving the environment, the Customer desires and agrees to purchase, and EKPC and Cooperative are both willing and agree to sell, energy from renewable resources and renewable energy credits ("RECs") in an amount equal to one hundred percent (100%) of the energy consumed by the Customer at the Facility; and

WHEREAS, it is the purpose and intent of the Customer, Cooperative and EKPC to assure that all incremental costs associated with the renewable energy and REC purchases contemplated herein are assumed by the Customer so that no other customer of Cooperative, and no other Owner-Member of EKPC, are called upon to subsidize or otherwise pay incremental costs arising from, or related to, the Parties' performance of this Agreement; and

WHEREAS, EKPC fully integrated into the PJM Interconnection, LLC ("PJM") regional transmission system on June 1, 2013;

NOW, THEREFORE, in consideration of the mutual covenants, promises, premises, terms and conditions contained herein, the Parties agree as follows:

1. **Term**. This Agreement shall become effective upon the date of the Order of the Kentucky Public Service Commission ("Commission") approving this Agreement, subject to the provisions of Paragraph 29 below ("Effective Date"). This Agreement shall continue in effect for an Initial Term of fifteen (15) years from said date. EKPC, Cooperative and Customer shall meet two years prior to the expiration of this contract to determine if this Agreement is to be extended.

2. **Rates and Charges.**

   a. Customer shall pay Cooperative monthly for power and energy made available under this Agreement in accordance with the rates, charges, and provisions defined herein and as modified, replaced, or adjusted from time to time and approved by the Commission.

b. For billing from EKPC to Cooperative, EKPC will provide wholesale electricity to Cooperative for Customer pursuant to the rates, charges, and provisions of EKPC's: (1) Rate G – Special Electric Contract Rate; (2) Rate EDR – Economic Development Rider, where the billing demand shall be the contract demand as defined in EKPC's Rate Section G; (3) Rate H – Wholesale Renewable Energy Program; and (4) Rate CS – Community Solar.

c. For billing from Cooperative to Customer, Cooperative will provide power and energy to the Customer pursuant to the rates, charges, and provisions of Cooperative's: (1) Rate G – Large Industrial Customer; (2) Rate Economic Development Rider, where billing demand shall be the contract demand as defined in Cooperative's Rate G; (3) Rate Renewable Energy Program; and (4) Rate CS – Community Solar Power Generation.

3. **Availability of Power**. Subject to the other provisions of this Agreement, Cooperative shall make available to Customer, and Customer shall take and purchase from Cooperative, all of Customer's requirements for electric power and energy and related services for the operation of Customer's Facility. The power and energy made available to Customer hereunder shall be delivered, taken, and paid for subject to the provisions of Paragraph 2 of this Agreement and the tariffs set forth therein, as modified from time to time by appropriate authority. In the event of any conflict between the provisions of this Agreement and said tariffs, the latter shall control.

a. **Delivery Point and Voltage**. The Point of Delivery for firm power and energy made available hereunder shall be the point(s) at which Customer's facilities connect to Cooperative's facilities. The power and energy made available hereunder shall be in the form of 3-phase alternating current at a frequency of approximately sixty (60) hertz and at a nominal voltage of thirteen thousand eight hundred kilovolts (13,800 kV) at the metering point.

b. **Determination of Contract Demand**. The "Contract Demand" for service under this Agreement shall be:

(1) The actual demand as measured for the period from the Effective Date of this Agreement through June 30, 2022 and, for purposes of calculating the billing demand under the applicable tariff, no demand ratchet (which is understood by the Parties to mean any rate mechanism set forth in either EKPC's Rate G – Special Electric Contract Rate or Cooperative's Rate G – Large Industrial Customer that would utilize a demand level in excess of actual demand) shall apply;

(2) Thirty-two (32) MWs from July 1, 2022 through the Initial Term of this Agreement and any subsequent renewal thereof.

c. **Changes to Contract Demand**. Customer shall have the right to increase or decrease said levels of Contract Demand in increments not to exceed 1,000 kW by giving written notice one month prior to the date of the desired change, provided, however, the Contract Demand shall not be reduced below thirty-two (32) MWs on or after July 1, 2022.

4. **Use of Renewable Resources and RECs**.

a. **Renewable Energy and REC Purchases**. The calculations and elections necessary to fulfill the obligation to purchase and sell renewable energy are set forth in Appendix A, which is adopted and incorporated by reference as if set forth herein in full. EKPC and Cooperative shall provide 100% of the Customer's energy requirements via renewable energy and REC purchases in accordance with EKPC's Rate H - Wholesale Renewable Energy Program and Cooperative's Rate Renewable Energy Program for all delivery periods within the Initial Term, as follows:

(1) For the delivery period prior to July 1, 2021, the Customer's renewable energy consumption shall be covered by the purchase and retirement of RECs by EKPC and/or Cooperative on the Customer's behalf;

(2) For the delivery period July 1, 2021 through June 30, 2022, the Customer's renewable energy consumption shall be covered by the purchase and retirement of RECs by EKPC and Cooperative on the Customer's behalf;

(3) For the delivery period July 1, 2022 through June 30, 2023, the amount of renewable energy purchased from Cooperative hereunder shall be at least 42,000 MWhrs from power purchase agreements or physical renewable resources.

(4) For the delivery period July 1, 2023 through the balance of the Initial Term of the Agreement, the amount of renewable energy purchased hereunder shall be at least 105,000 MWhrs from power purchase agreements or physical renewable resources.

(5) The Customer's renewable energy consumption that exceeds the renewable energy purchased through the Wholesale Renewable Energy Program in any calendar year shall be offset by the purchase and retirement of RECs by EKPC and/or Cooperative on the Customer's behalf. The Parties to this Agreement shall meet on a quarterly basis to review the forecasted need for REC purchases. EKPC will act as agent for the Customer for REC purchases and will provide non-binding estimates of the REC prices at the quarterly meetings. Customer shall direct EKPC on the types of renewable RECs the customer prefers and the price ranges of RECs acceptable to the Customer. As directed by the Customer, EKPC shall engage the market and purchase RECs necessary to offset the Customer's renewable energy consumption not already offset by the Renewable Energy Program. EKPC shall provide Customer with documentation demonstrating that all RECs purchased on Customer's behalf were retired in the name of the Customer. EKPC's administrative fee under Rate H – Wholesale Renewable Energy Program will be waived for REC purchases made on behalf of customer, however, all EKPC's direct costs for RECs will pass directly through to the Customer.

b. **Renewable Resources.** The choices available include: solar, wind, hydro, landfill methane gas or biomass.

(1) **Participation in Cooperative Solar One**. Customer agrees to obtain solar energy from EKPC's Cooperative Solar One facility located near Winchester, Kentucky. Customer's initial participation in Cooperative

Solar One shall be to license three hundred thirty (330) panels in accordance with EKPC's Rate CS – Community Solar and Cooperative's Rate CS – Community Solar Power Generation tariffs. The Parties agree that EKPC will maintain the panels and that Customer's participation fulfills an appropriate share of Cooperative Solar One.

(2) **Other Renewable Resources**. EKPC will collaborate with Customer to determine the types of renewable energy and energy volumes desired to satisfy the Customer's load. EKPC will contract for renewable resources through a competitive bid process. EKPC will make bid information available to the Customer to assure Customer that EKPC is acting in the interest of the Customer. EKPC will also assure that the renewable energy resources chosen for the Customer does not adversely impact the balance of Cooperative's members or EKPC Owner Members. EKPC retains the sole and exclusive right to select the resource(s) from which the renewable energy purchases contemplated herein are acquired. The Customer may not request or designate that the renewable energy purchased hereunder be acquired from any particular generation facility. Cooperative agrees to provide Customer with reasonable updates in the event of any changes in the availability of renewable energy purchased pursuant to this Agreement. EKPC and Cooperative agree to provide Customer with reasonable updates during quarterly reviews including but not limited to performance of selected renewable resources (generation trends, analysis, economic impact), forward market values of equivalent renewable energy, REC

availability and other pertinent information related to the renewable energy purchased pursuant to this Agreement.

(3) **Self-Build Stipulations**. If EKPC participates in bid process with a self-build option, EKPC will screen the staff preparing the bid from the staff evaluating the bids and engage a third party to assist in the bid evaluation to assure the process is fair to all participants.

c. **Wholesale Credits.** The Cooperative shall receive a monthly credit on its wholesale power bill in an amount equal to the lesser of: (1) the avoided cost of: (a) base fuel and fuel adjustment clause per MWh of renewable energy delivered and capacity credits; and (b) variable environmental surcharge equal to the delivered renewable energy monthly; or (2) the zonal EKPC Localized Marginal Cost (LMP). At no time shall EKPC be required to convert any credit accruing hereunder to cash. Any excess credit(s) can be carried forward to offset a later billed amount.

d. **Retail Credits.** The Customer shall receive a monthly credit on its retail power bill in an amount equal to the lesser of: (1) the avoided cost of: (a) base fuel and fuel adjustment clause per MWh of renewable energy delivered and capacity credits; and (b) variable environmental surcharge equal to the demand energy; or (2) the zonal EKPC LMP Cost. At no time shall Cooperative be required to convert any credit accruing hereunder to cash. Any excess credit(s) can be carried forward to offset a later billed amount.

e. **<u>Early Termination of the Wholesale Renewable Energy Program</u>.**

i. **<u>By Customer</u>.** In the event that the Customer ceases operations at the Facility or otherwise stops taking service at the Facility at any time within the Term of this Agreement, the Customer shall pay EKPC/Cooperative the difference, if positive, of the levelized cost of existing renewable energy contracts less the forward market value of equivalent renewable energy times the prior three years' average production times the shorter of the Agreement Term or the remaining years of the renewable energy contract term(s) (the "Early Renewable Energy Termination Payment") within 30 days from the date the Customer ceases operations at the Facility or stops taking service at the Facility.

ii. **<u>By EKPC</u>.** In the event that EKPC defaults on its obligation to sell renewable energy to Customer, other than as a result of a Force Majeure, at any time within the Term of this Agreement, EKPC shall pay Customer the difference, if positive, of the forward market value of equivalent renewable energy less the levelized cost of contracted renewable energy times the prior three years' average production times the shorter of the Agreement Term or the remaining years of the renewable energy contract term(s) (the "Supplier Early Termination Payment") within 30 days from the date EKPC defaults on its obligation to sell renewable energy hereunder.

f. **<u>Regulatory Approval of Renewable Energy Purchases</u>.** Customer understands and acknowledges that EKPC will likely be required to obtain approval from the Commission for any renewable energy purchase(s) exceeding two calendar years in duration. In the event the Commission denies such a request for approval, EKPC agrees to use good faith efforts gain approval for renewable energy from an alternative source, however, the Commission's failure to approve such request(s) shall not constitute an event of default by EKPC with regard to its performance under this Agreement.

5. **Economic Development Rider ("EDR")**. The Customer's Facility has a minimum average billing load equal to or in excess of the amount required by EKPC's Rate EDR – Economic Development Rider and Cooperative's Rate Economic Development Rider. The Customer further represents that it plans to hire more than thirty employees and will have an approximate capital investment of $130 million.

a. **Discount Period and Discount Rate to Demand Charges.** The Customer has selected a five (5) year discount period option which requires a total minimum contract term of ten (10) years. The discount period shall begin with the first complete billing month beginning on or after July 1, 2022. The discount to the total demand charge under this option will be:

First 12 consecutive monthly billings	50%
Next 12 consecutive monthly billings	40%
Next 12 consecutive monthly billings	30%
Next 12 consecutive monthly billings	20%
Final 12 consecutive monthly billings	10%

The discount shall be applied to the demand charges as stated in EKPC's Rate G – Special Electric Contract Rate and the resulting reduction shall be passed through to the Customer without any revision or adjustment by the Cooperative. The discount rates shall apply to the demand charge for the contract demand. Any credits provided under any other demand-related rider shall be applied before the discounts as described above are applied. If during the discount period the Customer elects to take service under the terms and conditions of another tariff offered by the Cooperative that does not correspond to EKPC's Rate G – Special Electric Contract Rate, the discount shall be applied to the demand charges of the EKPC rate schedule that corresponds to the Cooperative's tariff offering.

b. **Load Factor**. The Customer agrees to maintain a minimum load factor of 60 percent during the months of the five (5) year discount period, however, the Customer may fail to achieve the 60 percent minimum load factor for no more than ten (10) months, in total, during the discount period. During those ten (10) months, the Customer will continue to receive the discount to the total demand charge. EKPC shall notify the Cooperative and the Cooperative shall notify the Customer of each month the Customer has failed to achieve the 60 percent minimum load factor yet continued to receive the discount to the total demand charge. The notification will include the calculation of the achieved load factor for the month. Failure to maintain the 60 percent minimum load factor in any month beyond the ten (10) months will result in the suspension of the discount to the total demand charge for that month. EKPC shall notify the Cooperative and the Cooperative shall notify the Customer in a month where the discount to the total demand charge has been suspended. The notification will include the calculation of the achieved load factor for the month in question. The discount to the total demand charge will resume in the next subsequent month the 60 percent minimum load factor is achieved. However, the discount will resume at the discount rate applicable to the month of the discount period and failure to meet the 60 percent minimum load factor in any month will not extend the discount period. For purposes of this Agreement, load factor is defined by the formula:

$$\text{Load Factor} = \text{billed kWh} / (\text{billed kW} \times 730)$$

where billed kWh and billed kW shall be the energy usage and demand as billed by EKPC and 730 reflects the average number of hours in a month.

c. **Capacity Purchases**. The Customer agrees that EKPC and the Cooperative can only offer an EDR during either periods of excess capacity or the additional capacity needs have been secured or are capable of being economically secured through a market purchase agreement. If additional capacity is secured through a market purchase, then the Customer will be responsible for the costs of the market purchase agreement. The costs of the market purchase agreement will be disclosed separately on the Customer's monthly bill. The determination of the cost associated with a market purchase will be based on EKPC's participation in the PJM market and, in light of the Customer's need to rely upon renewable power, will likely be obtained through bilateral power purchase arrangements between EKPC and a renewable energy provider. If the total load requirement for EKPC in any year is not increased with the inclusion of the Customer's load, there will be no purchase or arrangement for additional capacity and consequently no additional capacity charges for that year.

d. **Other EDR Customer Specific Costs.** Any additional EDR customer-specific fixed costs shall be recovered over the Initial Term of the Agreement.

e. **Minimum Bill.** The minimum bill will equal the minimum bill as defined in the Cooperative's Rate G – Large Industrial Customer, plus the cost of any applicable capacity purchases and other customer specific costs, as described previously in this Agreement.

f. **Early Termination Penalties.** In the event that the Customer ceases operations at the Facility or otherwise stops taking service at the Facility within the Initial Term of this Agreement and EKPC and Cooperative have fulfilled all obligations hereunder to provide the renewable resources, the Customer shall reimburse to EKPC and the Cooperative a portion of the EDR credits received by the Customer. The EDR credit reimbursement shall be due within 30 days from the date the Customer ceases operations at the Facility or stops taking service at the Facility. As used in this Agreement, EDR credits refers to the total dollar difference between the demand charges actually paid by the Customer compared to the demand charges that would have been paid without the EDR discount. The Early EDR Termination Payment shall be determined as follows:

(i) If the Customer ceases operations at the Facility or otherwise stops taking service at the Facility during the first six (6) years of the Initial Term of this Agreement, the Customer shall reimburse 75 percent of the total EDR credits received by the Customer;

(ii) If the Customer ceases operations at the Facility or otherwise stops taking service at the Facility between the seventh and eleventh years of the Initial Term of this Agreement, the Customer shall reimburse 50 percent of the total EDR credits received by the Customer; or

(iii) If the Customer ceases operations at the Facility or otherwise stops taking service at the Facility in the twelfth year of the Initial Term or thereafter, no reimbursement of EDR credits received shall be required.

g. **Scheduled Maintenance**. The Parties acknowledge that Customer will typically schedule two maintenance periods each calendar year. Customer agrees to schedule one of these maintenance periods in either the month of July or August each year. Should the Customer be unable to schedule a maintenance outage in either of these months in any given year, it shall inform EKPC and Cooperative as soon as advance as is possible and neither EKPC nor Cooperative shall unreasonably withhold consent to a change in the maintenance period for that calendar year.

6. **Transmission.** EKPC shall arrange and be responsible for all transmission service for the renewable energy contemplated to be purchased hereunder and shall deliver or cause to be delivered such renewable energy to the point(s) of delivery of all current and future non-renewable energy sales to the Cooperative and from which the Cooperative's electric distribution system currently delivers energy to the Customer. EKPC shall schedule or arrange for scheduling services with its transmission providers to deliver the renewable energy to said point(s) of delivery.

7. **Distribution**. The Cooperative shall arrange and be responsible for all distribution service for the renewable energy contemplated to be purchased hereunder and shall deliver or cause to be delivered such renewable energy to the Customer's meter(s).

8. **Continuing Jurisdiction of the Commission**. The rates, terms and conditions of this Agreement for electric service shall be subject to modification or change by Order of the Commission, during the Initial Term and thereafter. The rates provided hereinabove shall

be adjusted to reflect any Commission-approved changes in applicable tariff rates, including any changes in the base rates approved for EKPC and/or Cooperative on or after the Effective Date of this Agreement.

9. **Voltage Fluctuations.** Customer and Cooperative shall cooperate to see that Customer's load is operated in accordance with prudent utility practices, as defined in Paragraph 12 below. Customer agrees to operate its Facility and equipment to reduce voltage fluctuations or harmonic distortions. Cooperative will notify Customer if its operations cause voltage fluctuations or harmonic distortions that result in interference with Cooperative's supply of service to other customers and will attempt to identify and help Customer correct such problems. Any substantial deviation from prudent utility practices that would cause additional voltage fluctuations or harmonic distortions requires approval from Cooperative. If Customer fails to install and/or to operate the necessary equipment on its premises to correct the voltage fluctuations or harmonic distortions of its load based on applicable industry and IEEE standards, or to prevent such voltage fluctuations or harmonic distortions from interfering with Cooperative's supply of services to other customers, Cooperative shall have the right to deny service to Customer. Any voltage fluctuations or harmonic distortions shall be corrected within twenty-four (24) hours after written notice from Cooperative to Customer stating the voltage fluctuation or harmonic distortion problems.

10. **Right of Access.** The duly authorized agents and employees of EKPC and/or Cooperative shall have access at all reasonable hours to the premises of Customer where equipment is owned by Cooperative or EKPC for the purpose of installing, repairing, inspecting, testing, operating, maintaining, renewing or exchanging any or all of their equipment which may

be located on the premises of Customer for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Customer shall not unreasonably withhold access from Cooperative and/or EKPC to access equipment or machinery owned by Cooperative or EKPC. The Parties agree to take reasonable steps to protect the property of each other Party located on its premises, and to permit no one to inspect or tamper with the wiring and apparatus of the other Party except such other Party's agents or employees, or persons authorized by law. It is agreed, however, that no Party assumes the duty of inspecting the wiring or apparatus of any other Party and shall not be responsible therefor and any risk taken by any other Party shall accept and insure the risk presented by its own employees, agents, or subcontractors onsite. The employees, agents, and representatives of EKPC and Cooperative that access the Customer's facilities shall abide by all applicable safety, health and similar rules and requirements provided by the Customer.

11. **Right of Removal**. Any and all equipment, apparatus, devices, or facilities placed or installed, or caused to be placed or installed, by any of the Parties hereto on or in the premises of another Party shall be and remain the property of the Party owning and installing such equipment, apparatus, devices, or facilities regardless of the mode or manner of annexation or attachment of real property of the other. Upon the termination of this Agreement, or any extension thereof, the owner thereof shall have the right to enter upon the premises of the other upon notice and approval of the other Party and shall within a reasonable time remove all or any portion of such equipment, apparatus, devices, or facilities, unless otherwise agreed by the Parties at the time of such termination. As a part

of any such removal, the owner shall perform restoration as required for any damage caused by said removal.

12. **Prudent Utility Practice**. EKPC and Cooperative shall design, construct and operate its facilities in accordance with prudent electric utility practice in conformity with generally accepted standards for electric utilities in the Commonwealth of Kentucky, including, but not limited to, the applicable edition of the National Electric Safety Code, as adopted by the Commission. The Customer will adhere to, and comply with, all applicable building electric codes, statutes, rules and regulations and maintain their electrical facilities in a prudent and reasonable manner.

13. **Billing and Payment**.

a. **Regular Monthly Billing**. EKPC shall invoice the Cooperative for all renewable energy delivered to the Cooperative as part of the invoice it sends to the Cooperative for all non-renewable energy purchases by the Cooperative. The Cooperative shall then invoice the Customer for all renewable energy delivered to the Customer as part of the invoice it sends to the Customer for all non-renewable energy purchases by the Customer. In both cases, the invoice shall provide sufficient information to demonstrate the manner in which the charges for renewable energy sales were calculated and to ensure adherence to Customer's prior request in regard to volume and pricing. Any and all RECs purchased by EKPC to offset the purchase of non-renewable energy by Customer from Cooperative, shall be similarly billed to EKPC with such costs passed directly to Customer on a monthly basis.

b. **Due Date**. Payment for electric power and energy furnished hereunder shall be due and payable at the office of Cooperative monthly. If Customer shall fail to pay any such bill, Cooperative may discontinue delivery of electric power and energy hereunder ten (10) days following written notice to Customer of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligations of Customer to pay the minimum monthly charge provided in the attached, or any other applicable, tariffs. All amounts unpaid when due shall be subject to a charge for late payment, as provided in EKPC's and Cooperative's approved tariffs, as applicable.

c. **Failure to Take Delivery.** If Customer fails to accept all or part of the renewable energy acquired or generated by EKPC or Cooperative, or to pay for any RECs acquired and retired by EKPC and or Cooperative, when such purchases are made in performance of their respective obligations under this Agreement, and such failure is not excused by EKPC's or the Cooperative's failure to perform, then the Customer shall pay to the Cooperative, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the amount for which the renewable energy is actually sold by EKPC or Cooperative to another buyer from the price set forth herein. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and the efforts made by EKPC and/or Cooperative to market renewable energy at the best market price attainable.

14. **Meter Testing and Billing Adjustment**. EKPC shall test and calibrate meters, or cause them to be tested and calibrated, by comparison with accurate standards at intervals of twenty-four (24) months. EKPC shall also make, or cause to be made, special meter tests at any time during normal business hours at Customer's request. The costs of all tests shall be borne or provided for by EKPC, provided, however, that if any special meter test made by Customer's request shall disclose that the meters are recording accurately Customer shall reimburse EKPC for the cost of such test. Meters registering not more than two (2) percent above or below normal shall be deemed to be accurate. The readings of any meter which shall have been disclosed by test to be inaccurate shall be corrected for the period during which meter error is known to have existed, or if not known, for one-half the elapsed time since the last such test in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period, the parties shall agree as to the amount of MW Demand and energy furnished during such period. Such estimates shall be based on Customer's operating records for the period in question, historical load records and other pertinent data and records, and Cooperative shall render a bill to Customer therefore. Meter calibration records will be provided by EKPC upon request from the Customer.

15. **Membership/Capital Credits**. Cooperative is a non-profit Kentucky corporation and Customer will benefit from any savings or reductions in cost of service in the same manner as any comparable customer as authorized by the Kentucky Revised Statutes, and by Cooperative's Articles of Incorporation and Bylaws. Customer shall participate in capital credits of Cooperative in accordance with the Kentucky Revised Statutes and Cooperative's Articles of Incorporation and Bylaws. However, capital credits shall not be recorded for the Customer during the five (5) year EDR discount period.

16. **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

a. the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within twenty (20) Business Days after written notice;

b. any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and written notice is given to that Party by another Party;

c. the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to receive the renewable energy and/or RECs, the exclusive remedy for which is provided in Paragraph 13(c) above) if such failure is either not remedied within twenty (20) Business Days after written notice or reasonable steps have not been taken, and continue to be taken, to remedy such failure as soon as practical;

d. a downgrade in the Customer's Credit Rating that is not remedied by the posting of adequate Performance Assurance, if required, within twenty (20) days of receiving the lower Credit Rating;

e. such Party becomes bankrupt; or

f. such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party. Notwithstanding this provision, parties agree that Customer shall not be in default if it is merged or consolidated with or acquired by an entity or entities in which control or majority interest remains in an affiliate, parent, or subsidiary of Customer.

17. **Termination for an Event of Default.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing and notice has been given in accordance with Paragraph 23 and any cure period(s) required in this Agreement have run, any other Party (the "Non-Defaulting Party") shall have the right to: (i) designate a day, no earlier than the day such notice is effective and no later than 30 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties; (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner and considering the full period of non-performance from the Early Termination Date through the date of the expiration of the Agreement's Initial Term, or any subsequent term, a Termination Payment amount as of the Early Termination Date. As soon as practicable after a termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within twenty (20) Business Days after such notice is effective. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within twenty (20) Business Days of receipt of the Non-

Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer to the Non-Defaulting Party an amount equal to the Termination Payment to be held in escrow pending the outcome of the dispute.

18. **Disputes and Adjustments of Bills.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the invoice shall be required to be made when due, with notice of the objection given to the other Parties. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Upon resolution of the dispute, any required refund shall be made within twenty (20) Business Days of such resolution along with interest accrued at the rate of two percent (2%) over the stated rate for commercial paper as published in the *Wall Street Journal* on the date that notice of the Dispute is given, from and including the due date to but excluding the date of the refund. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments. Any dispute with respect to an invoice is waived unless the other Parties are notified in accordance with this paragraph within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

19. **Resolution of Disputes.** Any dispute or need of interpretation between the Parties involving or arising under this Agreement first shall be referred for resolution to a senior representative of each Party. Upon receipt of a notice describing the dispute and designating the notifying Party's senior representative and that the dispute is to be resolved by the Parties' senior representatives under this Agreement, the other Parties shall promptly designate its senior representatives to the notifying Party. The senior representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within thirty (30) days after the notifying Party's notice was received by the other Parties, or within such other period as the Parties may jointly agree, the Parties may pursue any remedies available at law or in equity to enforce its rights provided in the Agreement. During this resolution process, EKPC and Cooperative shall continue to supply renewable energy as requested by Customer and Customer shall continue to accept requested renewable energy. Notwithstanding any inconsistent provision herein, any Party may be entitled to injunctive or other equitable relief without resort to the settlement or resolution procedures set forth herein.

20. **Representations and Warranties.** Each Party represents and warrants to the other Parties that:

   a. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

   b. it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement or is diligently pursuing them;

   c. the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, except as set forth herein;

d. this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

e. it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

f. there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

g. no Event of Default or potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

h. it is acting for its own account, has made its own independent decision to enter into this Agreement and, as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of any other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

i. it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all renewable energy referred to herein; and

j. the material economic terms of this Agreement were and are subject to individual negotiation by the Parties.

21. **Disclaimer and Force Majeure.** Customer understands and acknowledges that the generation of renewable energy and the sale of renewable energy is dependent upon numerous factors, including many which are beyond the control of EKPC and the Cooperative. EKPC and the Cooperative shall not be responsible or liable for any disruption or prevention of the production of renewable energy from any generation resource that is directly attributable to: (a) natural events such as acts of God, landslides, lightning, eclipses, weather patterns, earthquakes, fires, storms or the like; (b) interruption and/or curtailment of transmission facilities of third-parties; (c) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (d) governmental actions such as necessity for compliance with any court or administrative order, law, statute, ordinance, regulation, order, or policy having the effect of law promulgated by a governmental authority having jurisdiction. In the event of any inability by EKPC or the Cooperative to acquire or deliver the renewable energy contemplated to be purchased herein, the Customer agrees to accept non-renewable energy from the Cooperative under the terms and conditions of the Cooperative's tariffs and rate schedules in effect at such time(s). Any such purchases shall be offset by the purchase and retirement of RECs by EKPC on behalf of the Customer.

22. **Limitation of Liability. EXCEPT AS MAY BE SET FORTH EXPRESSLY HEREIN, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT EKPC AND THE COOPERATIVE HAVE MADE NO SPECIFIC OR GENERAL REPRESENTATIONS OR WARRANTIES REGARDING THE RENEWABLE**

ENERGY TO BE PURCHASED HEREBY OR ANY FACILITIES ASSOCIATED WITH GENERATING, TRANSMITTING OR DISTRIBUTING SAME, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT ANY REPRESENTATIONS AND WARRANTIES HAVE BEEN MADE, UNLESS EXPRESSLY SET FORTH HEREIN, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THEY ARE HEREBY EXPRESSLY DISCLAIMED. CUSTOMER ALSO UNDERSTANDS AND AGREES THAT HIS OR HER SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THIS AGREEMENT BY EKPC OR THE COOPERATIVE IS EXPRESSLY LIMITED TO PURCHASING REPLACEMENT POWER FROM THE COOPERATIVE AT PREVAILING TARIFFED RATES.

23. **Notices**. All notices, requests, consents, and other communications required under this Agreement shall be in writing and will be mailed to the mailing address for each Party as set forth below. Notices will be deemed delivered upon the earlier of: (a) the date of actual receipt, with a copy thereof being sent concurrently by certified or registered mail, return receipt requested: (b) three (3) Business Days after being deposited in certified or registered mail, return receipt requested, postage prepaid; or (c) the following Business Day after being delivered to a reputable overnight courier service.

   a. Any written notice, demand or request required or authorized under this Agreement shall be deemed properly given to or served on Cooperative if mailed to:

Mr. Jerry Carter
President and Chief Executive Officer
Inter-County Energy Cooperative Corporation
1009 Hustonville Road
Danville, KY 40422

b. Any such notice, demand or request shall be deemed properly given or served on Customer if mailed to acting Director of Whiskey & Energy, currently:

Timothy Wenzel, Director Whiskey & Energy
Diageo Americas Supply, Inc
24440 West 143rd Street
Plainfield, IL 06544

c. Any such notice, demand or request shall be deemed properly given or served on EKPC if mailed to:

David Smart, General Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
Winchester, KY 40391

Each party shall have the right to change the name of the person to whom, or the location where the notices are to be given or served by notifying the other Parties, in writing, of such change.

24. **Title and Risk of Loss.** Title to and risk of loss related to the renewable energy acquired herein shall transfer: (a) from EKPC to the Cooperative at the delivery point(s) for all energy delivered to the Cooperative currently and in the future; and (b) from the Cooperative to the Customer at the Customer's meter. EKPC and Cooperative both warrant that they will deliver the renewable energy to the Customer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Customer's meter. Neither Cooperative nor EKPC shall be liable for loss or damage to any person or property whatsoever, and Customer agrees to indemnify

and hold EKPC and/or Cooperative harmless for damages suffered by any individual or business entity resulting directly or indirectly from the use, misuse or presence of the said electric power and energy on Customer's premises, or elsewhere, after it passes the Point of Delivery, except where such loss or damage shall be shown to have been occasioned by the gross negligence of EKPC or Cooperative, their agents or employees.

25. **Continuity of Service**. Cooperative shall use reasonable diligence required of a public utility in Kentucky to provide a constant and uninterrupted supply of electric power and energy hereunder. If the supply of electric power and energy shall fail, or become defective through acts of God, Governmental authority, action of the elements, public enemy, accident, strikes, labor trouble, or any other cause beyond the reasonable control of Cooperative, it shall not be liable therefor or for damages caused thereby. From time to time, electric supply interruption may be required to perform maintenance on equipment or machinery that cannot be maintained while energized. Cooperative and/or EKPC will endeavor to coordinate with Customer to minimize the impact for such an event.

26. **Successors in Interest – Assignment**. The terms and conditions of this Agreement shall inure to and be binding upon the parties, together with their respective successors in interest. The Customer may not transfer or assign any obligation, right, liability, or credit arising under this Agreement from one account or service address to another account or service address. The Customer may not transfer, assign, convey, sell or donate this Agreement to any other person unless EKPC and the Cooperative have both provided their express written consent to such action. The foregoing restriction notwithstanding, the Parties agree that the Customer may make such transfer or assignment to any affiliate, parent, subsidiary, or other entity or entities under common control. Such consent may be

granted or withheld in the sole discretion of EKPC and the Cooperative. EKPC and Cooperative may assign this Agreement to the Rural Utilities Services ("RUS") and/or any other lenders to EKPC or Cooperative without such consent.

27. **Force Majeure**. The obligations of either party to this Agreement shall be suspended during the continuance of any occurrence, beyond the affected party's control (a "force majeure"), which wholly or partially prevents the affected party from fulfilling such obligations, provided that the affected party gives notice to the other party of the reasons for its inability to perform within a reasonable time from such occurrence, is diligently seeking to cure said force majeure, and gives notice to the other party within a reasonable time of such cure. As used in this Paragraph, the term force majeure shall include, but is not limited to: acts of God; strikes, wars, acts of public enemy; riots; storms; floods; civil disturbances; explosions; failures of machinery or equipment; unavoidable disruptions in power deliveries from EKPC; or actions of federal, state or local governmental authorities, which are not reasonably within the control of the party claiming relief.

Notwithstanding the above provision, no event of force majeure shall relieve Customer of the obligation to pay the minimum monthly charges provided herein or in the attached tariffs

28. **Security and Guaranty**.

a. **Financial Information**. If requested by any other Party to this Agreement, a Party shall deliver within one hundred twenty (120) days following the end of each fiscal year, a copy of the Party's or Party's parent company annual report containing audited consolidated financial statements for such fiscal year. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles (*i.e.* GAAP, IFRS and the RUS USoA); provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Party providing such information diligently pursues the preparation, certification and delivery of the statements. Each Party shall provide concurrent notice to the other Parties in the event of a material negative change in its financial condition.

b. **Obligation to Provide Performance Assurance**.

i. **By Customer**. The Customer, or its Guarantor, shall provide Performance Assurance acceptable to Cooperative and EKPC in an amount equal to:

(A) the current sum of the Early Renewable Energy Termination Payment if: (1) the Customer's highest Credit Rating is less than "BBB" from Standard & Poor's ("S&P") or Fitch or "Baa2" from Moody's; (2) an Event of Default on the part of the Customer has occurred; or (3) the Customer has no Credit Rating from S&P, Fitch or Moody's;

(B) half the current sum of the Early Renewable Energy Termination Payment if the Customer's highest Credit Rating is between "A" from S&P or Fitch or "A2" from Moody's and "BBB" from S&P or Fitch or "Baa2" from Moody's, inclusive; or

(C) zero if the Customer's highest Credit Rating is better than "A" from S&P or Fitch or "A2" from Moody's.

(D) If Performance Assurance is required to be posted pursuant to subparagraphs (A) through (C) herein, the Early Renewable Energy Termination Payment shall be calculated quarterly. If Customer provides Performance Assurance via an irrevocable standby letter of credit, the amount will be adjusted quarterly and EKPC will release the excess Performance Assurance as appropriate.

For purposes of this Agreement, "Credit Rating" means with respect to any entity, on any date of determination, the respective rating then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Fitch or Moody's, or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its issuer rating by S&P, Fitch or Moody's.

ii. **By EKPC**. EKPC shall provide Performance Assurance acceptable to Customer in an amount equal to:

(A) the current sum of the Supplier Early Termination Payment if: (1) EKPC's highest Credit Rating is less than "BBB" from Standard & Poor's ("S&P") or Fitch or "Baa2" from Moody's; or (2) an Event of Default on the part of EKPC has occurred;

(B) half the current sum of the Supplier Early Termination Payment if EKPC's highest Credit Rating is between "A" from S&P or Fitch or "A2" from Moody's and "BBB" from Standard & Poor's or "Baa2" from Moody's, inclusive; or

(C) zero if the EKPC's highest Credit Rating is better than "A" with S&P or Fitch or "A2" from Moody's.

(D) If Performance Assurance is required to be posted pursuant to subparagraphs (A) through (C) herein, the Supplier Early Termination Payment shall be calculated quarterly. If EKPC provides Performance Assurance via an irrevocable standby letter of credit, the amount will be adjusted quarterly and Customer will release the excess Performance Assurance as appropriate.

For purposes of this Agreement, "Credit Rating" means with respect to any entity, on any date of determination, the respective rating then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Fitch or Moody's, or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its issuer rating by S&P, Fitch or Moody's.

iii. **Performance Assurance Threshold**. Notwithstanding the provisions of subparagraphs i. and ii. above, no Performance Assurance shall be required to be posted by either Customer or EKPC if the current sum of the Early Renewable Energy Termination Payment or the Supplier Early Termination Payment, as applicable, is equal to or less than $250,000.

c. **Form of Performance Assurance**. Unless otherwise agreed to in writing by EKPC and Customer, the form of any Performance Assurance required herein shall be an irrevocable, transferable, standby Letter of Credit, issued by a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with: (i) a Credit Rating of at least (a) "A-" by S&P or "A3" by Moody's; and (ii) having a capitalization of at least $1,000,000,000. The Letter of Credit must be substantially in a form set forth in Appendix B hereto, with such changes to the terms in that form as the issuing bank may require and as may be reasonably acceptable to the beneficiary thereof. The costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

d. **Administration of Performance Assurance**. Any Letter of Credit shall be subject to the following provisions:

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall: (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit; (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit at least twenty (20) business days prior to the expiration of the outstanding Letter of Credit; and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured

Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party within one (1) business day after such refusal;

(ii) The Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit; and

(iii) With respect to each such Letter of Credit, the Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, but only in strict adhere to the terms set forth in the Letter of Credit, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of this Paragraph 28.

e. **Exercise of Rights Against Performance Assurance**. In the event that: (1) an Event of Default with respect to the Pledging Party has occurred and is continuing, and all required notices have been given and any cure periods set forth in this Agreement have run; or (2) the Agreement is terminated by any Party prior to the expiration of the term, a Secured Party may exercise any one or more of the rights and remedies provided under the Agreement or as otherwise available under applicable Kentucky law, including, without limitation, exercising any one or more of the following rights and remedies:

(i) all rights and remedies available to a secured party under the Kentucky Uniform Commercial Code and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;

(ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against, and in satisfaction of, any amount payable by the Pledging Party in respect of any of its obligations; and

(iii) the right to draw in strict adherence with the terms on any outstanding Letter of Credit issued for its benefit. A Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

f. **Encumbrance; Grant of Security Interest**. As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Agreement, each Party hereby pledges, assigns, conveys and transfers to the other Parties, and hereby grants to the other Parties a present and continuing security interest in and to, and a general first lien upon and right of setoff against, all Performance Assurance which has been or may in the future be transferred to, or received by, the other Parties and each Party agrees to take such action as the other Parties reasonably request in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

g. **Guaranty**. Customer's obligations with regard to payment and the provision of Performance Assurance may be assumed by an affiliated guarantor of the Customer who shall be permitted to use its own Credit Rating from Standard & Poor's, Fitch or Moody's for purposes of calculating any Performance Assurance amounts due hereunder. Any such Guaranty shall be in a form substantially similar to that set forth in Appendix C and that is acceptable to EKPC and Cooperative in their respective sole and exclusive discretion. The Customer may substitute an affiliated entity as its Guarantor after having received the express written consent of EKPC and Cooperative, which shall not be unreasonably withheld, to do so. The existence of a Guarantor shall not relieve or excuse the Customer from any obligations set forth in this Agreement.

h. **Customer Deposit**. In addition to all other payment and Performance Assurance obligations, the Customer shall, prior to December 31, 2020 (and by December 31st of each subsequent year the Agreement is in effect):

(i) Pay to Cooperative a sum equal to the amount necessary to purchase a bond or secondary insurance policy equal to the amount of two times the estimated monthly average Rate G billings once the Customer's facilities have reached their designed production; or

(ii) Provide a surety bond issued by any Certified Company listed on the most recent version of the U.S. Department of the Treasury's Circular 570 naming Cooperative as the beneficiary thereof and in an amount equal to two times the estimated monthly average Rate G billings once the Customer's facilities have reached their designed production.

29. **Approvals**. The rates and charges for electrical service established hereunder are subject to approval by the Commission pursuant to Kentucky Revised Statutes, Chapter 278, and any necessary approvals by the RUS and the National Rural Utilities Cooperative Finance Corporation. The parties covenant to use their best efforts to forthwith seek and support such approvals for this Agreement by filing such papers, presenting such testimony and taking such other action as may be necessary or appropriate to secure the same. If such approval shall not be received from the Commission on or before November 30, 2020, any Party may void this Agreement without further liability, except to the extent any liability has already accrued.

30. **Effect on other Rates**. Nothing in this Agreement shall be construed to effect, limit, alter, amend or change the terms or conditions of Customer's receipt of service from the Cooperative under any other tariff or rate schedule then in effect or subsequently approved by the Commission which applies to the Customer. Likewise, nothing in this Agreement shall be construed to effect, limit, alter, amend or change the terms or conditions of the Cooperative's receipt of service from EKPC under any other tariff or rate schedule then in effect or subsequently approved by the Commission which applies to the Cooperative.

31. **Modifications**. Any future revisions or modifications of this Agreement shall require the unanimous written approval of EKPC, Cooperative and Customer, and any necessary approvals by RUS, any other lenders to Cooperative or EKPC, and Commission.

32. **Miscellaneous**.

a. **Headlines of Articles**. Headings of articles of this Agreement have been inserted for convenience only and shall in no way affect the interpretation of any term or provision hereof.

b. **Severability**. Except where expressly stated otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective.

c. **Waiver of Trial by Jury**. **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THE AGREEMENT BY, AMONG**

OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

d. **Jurisdiction.** Each party agrees that any suit, action, dispute or other proceeding arising out of the Agreement or any transaction contemplated by the Agreement shall be heard in, and hereby irrevocably submits to the exclusive jurisdictions of the Circuit Court of Clark County or Marion County, Kentucky, and the United States District Court for the Eastern District of Kentucky, Lexington Division, and the related appellate courts. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth in the Agreement shall be effective service of process for any actions, suit, dispute or other proceeding described herein. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement in the aforementioned courts and the related appellate courts, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

e. **Governing Law.** This Agreement shall be deemed to have been made in, and shall be construed under, the internal laws of the Commonwealth of Kentucky, without regard to the principles of conflicts of laws thereof.

f. **Waivers. ANY WAIVER AT ANY TIME BY A PARTY OF ITS RIGHTS WITH RESPECT TO A DEFAULT OR WITH RESPECT TO ANY OTHER MATTERS ARISING ON CONNECTION WITH THIS AGREEMENT**

SHALL NOT BE DEEMED A WAIVER WITH RESPECT TO ANY SUBSEQUENT DEFAULT OR OTHER MATTER.

g. **Prior Agreements**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

h. **No Agency**. In performing their respective obligations hereunder, no Party is acting, or is authorized to act, as agent of any other Party.

i. **Forward Contract**. The Parties acknowledge and agree that all sales of renewable power hereunder constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

j. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EAST KENTUCKY POWER COMPANY, INC.

BY: ______________________ TITLE: Pres./CEO

DATE: Jun 25, 2020

INTER-COUNTY ENERGY COOPERATIVE CORPORATION

BY: Jerry W. Carter TITLE: President and CEO

DATE: Jun 25, 2020

DIAGEO AMERICAS SUPPLY, INC.

BY: Marsha McIntosh Hamilton TITLE: VP NA Supply Procurement

DATE: Jun 24, 2020

APPENDIX A

RENEWABLE ORDER SUMMARY

Customer's Average Annual Energy Consumption (Estimated) =

July 1, 2021 – June 30, 2022: 105,000 MWhs per year
July 1, 2022 – June 30, 2023: 105,000 MWhs per year
July 1, 2023 – through remainder of initial Term: 175,000 MWhs per year

Amount of Renewable Energy (Renewable Resources Plus RECs) to be Purchased = 100% of Average Annual Energy Consumption estimated above and pursuant to Paragraph 4.

Types of Renewable Energy to be Purchased (check all that apply):

___X_ Solar

Initial: 330 Panels from EKPC's Cooperative Solar One

Additional: ________________

_X___ Wind

_____ Hydro

_____ Landfill Methane Gas

_____ Biomass

APPENDIX B

FORM OF LETTER OF CREDIT

[ISSUING BANK'S LETTERHEAD]

DATE OF ISSUE:

IRREVOCABLE STANDBY DOCUMENTARY CREDIT NO. [-]

BENEFICIARIES:

EAST KENTUCKY POWER COOPERATIVE, INC.
4775 LEXINGTON ROAD
WINCHESTER, KY 40391

INTER-COUNTY ENERGY COOPERATIVE CORPORATION
1009 HUSTONVILLE ROAD
DANVILLE, KY 40422

APPLICANT; [NAME AND ADDRESS]

AMOUNT: [-]

DATE AND PLACE OF EXPIRY: [-] AT COUNTER OF ISSUING BANK

LADIES AND GENTLEMEN:

WE HEREBY ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT, WITH REFERENCE NUMBER [NUMBER] ("**STANDBY LETTER OF CREDIT**"), IN FAVOR OF EAST KENTUCKY POWER COOPERATIVE, INC. AND INTER-COUNTY ENERGY COOPERATIVE CORPORATION (EACH A "**BENEFICIARY**"), AT THE REQUEST AND FOR THE ACCOUNT OF [NAME OF APPLICANT] ("**APPLICANT**"), IN THE MAXIMUM AGGREGATE AMOUNT OF $[AMOUNT].

WE UNDERTAKE TO EACH BENEFICIARY TO HONOR THE BENEFICIARY'S DEMAND FOR PAYMENT OF AN AMOUNT AVAILABLE UNDER THIS STANDBY LETTER OF CREDIT, UPON PRESENTATION OF A DEMAND FOR PAYMENT IN THE FORM OF THE ANNEXED DEMAND FOR PAYMENT ATTACHED HERETO AS EXHIBIT A, AT THE FOLLOWING PLACE FOR PRESENTATION: **HSBC BANK USA, N.A. GLOBAL TRADE AND RECEIVABLES FINANCE (GTRF) TRANSACTION SERVICES, 452 FIFTH AVENUE, NEW YORK NY, 10018** ON OR BEFORE THE EXPIRATION DATE.

THE EXPIRATION DATE OF THIS STANDBY LETTER OF CREDIT IS [DATE].

WE UNDERTAKE TO MAKE PAYMENT TO A BENEFICIARY, UNDER THIS STANDBY LETTER OF CREDIT WITHIN THREE BUSINESS DAYS OF RECEIPT BY US OF A PROPERLY PRESENTED DEMAND FOR PAYMENT. THE BENEFICIARY SHALL RECEIVE PAYMENT FROM US BY WIRE TRANSFER TO A BANK ACCOUNT OF THE BENEFICIARY, AS DESCRIBED IN THE DEMAND FOR PAYMENT.

ANY ONE BENEFICIARY OR COMBINATION OF BENEFICIARIES, ACTING INDIVIDUALLY OR COLLECTIVELY, MAY DRAW ON THIS LETTER OF CREDIT IN FULL OR IN PART, AND ANY ACTION TAKEN BY ANY OR ALL BENEFICIARIES HEREUNDER SHALL BIND EACH OF THEM.PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS STANDBY LETTER OF CREDIT. THE AGGREGATE AMOUNT AVAILABLE TO ALL BENEFICIARIES UNDER THIS STANDBY LETTER OF CREDIT AT ANY TIME SHALL BE THE FACE AMOUNT OF THIS STANDBY LETTER OF CREDIT, LESS THE AGGREGATE AMOUNT OF ALL PARTIAL DRAWINGS PREVIOUSLY PAID TO ANY BENEFICIARY AT SUCH TIME.

THIS STANDBY LETTER OF CREDIT IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

PLEASE SEND ALL CLAIMS AND CORRESPONDENCE TO THE FOLLOWING ADDRESS:

HSBC BANK USA, N.A.,
GLOBAL TRADE AND RECEIVABLES FINANCE (GTRF)
TRANSACTIONS SERVICES
452 FIFTH AVENUE
NEW YORK, NY 10018

FOR ANY QUERIES, PLEASE CONTACT OUR CLIENT SERVICES TEAM AT:
GTRF.USCS@US.HSBC.COM OR PHONE NO. 1 866 327 0763 OR FAX NO. 1 718 488 4909

____
HSBC BANK USA, N.A.
NAME AND TITLE

____
HSBC BANK USA, N.A.
NAME AND TITLE

EXHIBIT A

FORM OF DEMAND FOR PAYMENT

DATE: [DATE OF DRAWING]

LETTER OF CREDIT REFERENCE NUMBER: [NUMBER]

ISSUING BANK:

[NAME AND ADDRESS OF ISSUING BANK]

APPLICANT:

[NAME AND ADDRESS OF APPLICANT]

BENEFICIARY:

[NAME AND ADDRESS OF BENEFICIARY]

THIS DEMAND FOR PAYMENT IS PRESENTED BY [NAME OF BENEFICIARY], THE BENEFICIARY UNDER THE STANDBY LETTER OF CREDIT WITH REFERENCE NUMBER [NUMBER] (THE "**STANDBY LETTER OF CREDIT**"), FOR THE AMOUNT OF $[AMOUNT], WHICH CONSTITUTES A [FULL/PARTIAL] PAYMENT OF THE FUNDS AVAILABLE TO THE BENEFICIARY UNDER THE STANDBY LETTER OF CREDIT.

UNDER THIS DEMAND FOR PAYMENT, THE BENEFICIARY STATES THAT:

THE APPLICANT IS OBLIGATED TO PAY THE BENEFICIARY THE AMOUNT DEMANDED, PURSUANT TO OR IN CONNECTION WITH THE INDUSTRIAL POWER AGREEMENT WITH ECONOMIC DEVELOPMENT RIDER AND RENEWABLE ENERGY PURCHASE BETWEEN THE BENEFICIARY AND THE APPLICANT, DATED [DATE OF AGREEMENT] AND AS DETAILED IN THE NOTICE OF DEMAND FOR PAYMENT PROVIDED TO BENEFICIARY BY APPLICANT (A COPY OF WHICH IS ATTACHED HERETO) ("**AGREEMENT**").

THE AMOUNT DEMANDED IS DUE AND UNPAID UNDER THE AGREEMENT AND ALL REQUIRED NOTICES HAVE BEEN GIVEN AND ALL TIME TO CURE PERIODS AS SET FORTH IN THE AGREEMENT HAVE RUN, AND IN ADDITION, BENEFICIARY HAS GIVEN APPLICANT REQUIRED NOTICE OF ITS INTENT TO MAKE DEMAND UNDER THIS STANDBY LETTER OF CREDIT.

THE BENEFICIARY REQUESTS THAT THE AMOUNT DEMANDED HEREUNDER BE TRANSFERRED TO THE BENEFICIARY BY WIRE TRANSFER, TO THE FOLLOWING BANK ACCOUNT OF THE BENEFICIARY:

[NAME, ADDRESS AND ROUTING NUMBER OF BENEFICIARY'S BANK ACCOUNT]

[NAME OF BENEFICIARY'S ACCOUNT]

[NUMBER OF BENEFICIARY'S ACCOUNT]].

[BENEFICIARY'S NAME]

By: ____________________

Name: ____________________

Title: ____________________

APPENDIX C

FORM OF GUARANTY

GUARANTY AGREEMENT

This is a GUARANTY AGREEMENT (the "Guaranty Agreement"), dated and effective as of January __, 2020, by and between: **East Kentucky Power Cooperative, Inc.**, a Kentucky corporation with its principal offices at 4775 Lexington Road, Winchester, Kentucky 40391 ("EKPC"), **Inter-County Energy Cooperative Corporation**, a Kentucky corporation with its principal offices at 1009 Hustonville Road, Danville, Kentucky 40422 ("Cooperative"); and ____________, a __________ corporation with its principal offices at ______________________________ ("Guarantor").

Recitals

WHEREAS Diageo Americas Supply, Inc. ("Diageo Americas Supply, Inc.") has entered into an Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases, dated ______________, with EKPC and Cooperative (the "Industrial Power Agreement"), pursuant to which Diageo Americas Supply, Inc. has made certain promises and covenants and has certain payment and performance assurance obligations; and

WHEREAS the Industrial Power Agreement requires Diageo Americas Supply, Inc. to post varying amounts of performance assurance under certain circumstances involving its credit rating from Standard & Poor's or Moody's; and

WHEREAS Diageo Americas Supply, Inc. may use the credit rating of an affiliate who agrees to guaranty its payment and performance assurance obligations under the Industrial Power Agreement; and

WHEREAS, Guarantor, a corporate affiliate, parent, subsidiary or other entity or entities under common control with Diageo Americas Supply, Inc., agrees to be Diageo Americas Supply, Inc.'s guarantor under the Agreement, thereby substituting its credit rating for that of Diageo Americas Supply, Inc. and reducing the amount of performance assurance required under the Industrial Power Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Guaranty of Payment and Performance.** The Guarantor, intending to be bound as an accommodation party for Diageo Americas Supply, Inc., absolutely and unconditionally guarantees to EKPC and Cooperative, their respective successors, endorsees, transferees and assigns, the prompt performance by Diageo Americas Supply, Inc. of all of Diageo Americas Supply, Inc.'s payment and performance assurance obligations under the Industrial Power Agreement (collectively, the "Guaranteed Obligations").

2. **Obligations Unconditional**. This is an unconditional and absolute guaranty of payment and performance. If for any reason Diageo Americas Supply, Inc. fails to observe or perform any obligation, undertaking or condition (whether affirmative or negative) in the Industrial Power Agreement to be performed or observed by Diageo Americas Supply, Inc., or if any event of default occurs thereunder and any required notice has been given and any cure period has run, the Guarantor shall promptly perform or observe or cause to be performed or observed each such obligation, undertaking or condition, or be responsible for the damages occasioned by such default, regardless of any set-off or counterclaim which Diageo Americas Supply, Inc. may have or assert, and regardless of whether or not EKPC or Cooperative, or anyone on their behalf, shall have instituted any suit, action or proceeding or exhausted their remedies or taken any steps to enforce any rights against Diageo Americas Supply, Inc. or any other person to compel such performance or to collect all or any part of such amount pursuant to the provisions of the Industrial Power Agreement, or at law or in equity, or otherwise, and regardless of any other condition or contingency. The liability of the Guarantor shall be for the entire amount of the Guaranteed Obligations, jointly and severally with that of Diageo Americas Supply, Inc.

3. **Waivers and Agreements.** The Guarantor hereby unconditionally:

(a) Waives any requirement that EKPC or Cooperative first seeks to enforce its remedies against Diageo Americas Supply, Inc. or any other person or entity before seeking to enforce this Guaranty Agreement against the Guarantor.

(b) Covenants that the Guarantor's obligations under this Guaranty Agreement will not be discharged except by complete payment and performance of all the Guaranteed Obligations existing under the Industrial Power Agreement.

(c) Agrees that this Guaranty Agreement shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of, the Industrial Power Agreement; or any limitation of the liability of Diageo Americas Supply, Inc. thereunder; or any limitation on the method or terms of payment or performance assurance thereunder which may now or hereafter be caused or imposed in any manner whatsoever.

(d) Waives any obligation that EKPC or Cooperative might otherwise have to marshal assets or to proceed against any particular persons or assets in any particular order.

IT IS THE INTENTION OF THE GUARANTOR THAT THIS AGREEMENT CONSTITUTE AN ABSOLUTE AND UNCONDITIONAL GUARANTY IN ANY AND ALL CIRCUMSTANCES, AND THIS GUARANTY AGREEMENT SHALL BE DISCHARGED ONLY BY THE PERFORMANCE IN FULL OF ALL OF THE GUARANTEED OBLIGATIONS.

4. **Waiver of Notice.** The Guarantor waives notice of acceptance of this Guaranty Agreement by EKPC and Cooperative, notice of execution and delivery of this Guaranty Agreement, and any other guaranty agreement, or any instrument referred to in such documents.

The Guarantor further waives, to the fullest extent permitted by applicable law, each and every notice to which the Guarantor would otherwise be entitled under principles of guaranty or suretyship law. Without limiting the generality of the foregoing, the Guarantor hereby expressly waives all notices and defenses whatsoever with respect to this Guaranty Agreement or with respect to the Guaranteed Obligations, including, but not limited to, notice of EKPC's and Cooperative's acceptance of this Guaranty Agreement or its intention to act, or its action, in reliance upon this Guaranty Agreement; notice of the present existence or future incurring by Diageo Americas Supply, Inc. of any of its Guaranteed Obligations or any other obligations or liability or any terms or amount thereof or any change therein; notice of any default (whether to the Guaranteed Obligations or of any other obligation or liability) by Diageo Americas Supply, Inc. or any accommodation party, co-maker, surety, pledgor, mortgagor, grantor of security, any other guarantor(s) or any other person or entity; notice of the obtaining or release of any guaranty or surety agreement (in addition to this Guaranty Agreement), pledge, mortgage, security interest, assignment, or other security for any of the Guaranteed Obligations; notice of dishonor; notice of nonpayment; notice of acceleration of the Guaranteed Obligations; notice of the making of a demand for payment of the liability or obligations of Diageo Americas Supply, Inc.; presentment and notice of presentment; protest and notice of protest; demand and notice of demand; nonpayment and notice of nonpayment; notice of the disposition of any collateral held to secure the Guaranteed Obligations; and any other notice required by law or otherwise.

5. **Subrogation**. The Guarantor agrees not to exercise any right which may have been acquired by way of subrogation under this Guaranty Agreement, by any payment made hereunder or otherwise, unless and until all of the Guaranteed Obligations, including, but not limited to, all obligations, undertaking or conditions to be performed or observed by Diageo Americas Supply, Inc. pursuant to the Industrial Power Agreement, shall have been performed, observed or paid in full. If any payment shall be made to the Guarantor on account of such subrogation rights at any time when such obligations, undertakings or conditions have not been performed, observed or paid in full, the Guarantor shall pay each and every such amount to EKPC or Cooperative if any amount is outstanding under the Industrial Power Agreement, to be credited and applied upon any of the obligations, undertakings or conditions to be performed, observed or paid pursuant to the Guaranty Agreement.

6. **Maximum Aggregate Liability and Termination**. For purposes of KRS 371.065: (a) the amount of the maximum aggregate liability of the Guarantor hereunder is the sum of all payment and performance assurance obligations of Diageo Americas Supply, Inc. as specified and calculated in the Industrial Power Agreement, plus all interest accruing on the Guaranteed Obligations and fees, charges and costs of collecting the Guaranteed Obligations, including reasonable attorneys' fees; and (b) this Guaranty Agreement shall remain in full force and effect until, and shall terminate on the date which the Industrial Power Agreement also terminates; provided, however, that termination of this Guaranty Agreement on such termination date shall not affect in any manner the liability of the Guarantor with respect to: (i) claims by EKPC or Cooperative against Diageo Americas Supply, Inc. which arise under the Industrial Power Agreement prior to such termination date; or (ii) Guaranteed Obligations created or incurred prior to such termination date, and extensions or renewals of, interest accruing on, or fees, costs or expenses incurred with respect to, such Guaranteed Obligations prior to, on or after such termination date.

7. **Miscellaneous**.

(a) This Guaranty Agreement shall be binding upon the Guarantor and the Guarantor's successors and assigns, and shall inure to the benefit of, and be enforceable by, EKPC and Cooperative and their respective successors, transferees and assigns, including each and every holder of any indebtedness, obligation or liability of Diageo Americas Supply, Inc. constituting all or a portion of the Guaranteed Obligations.

(b) EKPC and Cooperative may enforce this Guaranty Agreement with respect to one or more breaches either separately or cumulatively.

(c) This Guaranty Agreement may not be modified or amended without the prior written consent of each Party hereto, and any attempted modification or amendment without such consent shall be void.

(d) This Guaranty Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws (without regard to the conflicts of laws rules) of the Commonwealth of Kentucky.

(e) If any part, term or provision of this Guaranty Agreement is unenforceable or prohibited by any law applicable to this Guaranty Agreement, the rights and obligations of the Parties shall be construed and enforced with that part, term or provision limited so as to make it enforceable to the greatest extent allowed by law, or if it is totally unenforceable, as if this did not contain that particular part, term or provision. A determination in one jurisdiction that any part, term or provision of this Guaranty Agreement is unenforceable or prohibited by law does not affect the validity of such part, term or provision in any other jurisdiction.

(f) The headings in this Guaranty Agreement have been included for ease of reference only and shall not be considered in the construction or interpretation of this Agreement.

(g) This Guaranty Agreement may be signed by each Party hereto upon a separate copy, and in such case, one counterpart of this Guaranty Agreement shall consist of enough of such copies to reflect the signature of each Party.

(h) This Guaranty Agreement may be executed by each party in multiple counterparts, each of which shall be deemed an original. It shall not be necessary in making proof of this Guaranty Agreement or its terms to account for more than one such counterpart.

(i) In the event that any of the Guaranteed Obligations arise out of or are evidenced by more than one obligation or liability of Diageo Americas Supply, Inc. to EKPC or Cooperative, this Guaranty Agreement may be enforced as to each separate liability or obligation constituting a Guaranteed Obligation, either separately or cumulatively.

(j) Guarantor acknowledges and agrees that any suit, action or proceeding with respect to or arising out of this Guaranty Agreement shall only be brought in: the Circuit Court of

Clark County Kentucky, or Marion County, Kentucky, and the United States District Court for the Eastern District of Kentucky, Lexington Division, and the related appellate court; and Guarantor hereby submits to the nonexclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment and Guarantor waives any other preferential jurisdiction by reason of domicile. Guarantor hereby irrevocably waives any objection that Guarantor may now or hereafter have to the laying of venue of any suit, action or proceeding brought in any one of the above-described courts or that any such suit, action or proceeding has been brought in an inconvenient forum.

(k) TO THE EXTENT PERMITTED BY APPLICABLE LAW, GUARANTOR HEREBY VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHT GUARANTOR NOW HAS, OR MAY HAVE IN THE FUTURE, TO A TRIAL BY JURY ON ANY CLAIM, ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTY AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

EAST KENTUCKY POWER COOPERATIVE, INC.

By: ______________________________

Title: ______________________________

INTER-COUNTY ENERGY COOPERATIVE CORPORATION

By: ______________________________

Title: ______________________________

[GUARANTOR]

By: ______________________________

Title: ______________________________

Case No. 2020-00193
Exhibit 2

Request for Service Under EKPC's Rate EDR – Economic Development Rider and Inter-County's Rate Economic Development Rider, Dated May 15, 2020

Via E-mail Attachment *May 15, 2020*

Mr. Kirk Davidson – Procurement Manager
Diageo Americas Supply, Inc.
3 World Trade Center
175 Greenwich Street
New York, New York 10007

Via E-mail Attachment
Mr. Jerry Carter – CEO
Inter-County Energy Cooperative Corp.
10009 Hustonville Road
Danville, Kentucky 40422

Re: Diageo - Request for Service and Economic Development Rider

Dear Mr. Carter:

Inter-County Energy Cooperative Corporation (Inter-County Energy) will be serving the new Diageo Americas Supply, Inc. (Diageo) distillery in Lebanon, Kentucky. Diageo understands that Inter-County Energy offers an economic development rider (EDR) through its power provider, East Kentucky Power Cooperative, Inc. (EKPC), which allows for a 50% discount on the demand charge for new loads for the first year. As Diageo will be a new load, Diageo here by request service under the EDR, as well as under Inter-County Energy's Tariff Rate "G", which the utility has indicated will be the lowest cost Tariff for the new Diageo distillery.

To satisfy Section 5, Diageo submits the following information:

a) A description of the new load to be served: Diageo's Lebanon Distillery capacity is approximately 10,000,000 Proof Gallons per year
b) The number of new employees– Approximately 30 full-time team members
c) The capital investment associated with the load - $130 million

Furthermore, Diageo has determined that its contract demand will be 32 MW.

Please forward the appropriate contracts to me for execution, and feel free to call me any time if you have any questions or needs. Thank you in advance for your prompt consideration of Diageo's request.

Sincerely,

Kirk Davidson

DocuSigned by:
Kirk Davidson
60389F763F48447...

Case No. 2020-00193
Exhibit 3

Direct Testimony of David Crews

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF

THE JOINT APPLICATION OF EAST KENTUCKY	)	
POWER COOPERATIVE, INC. AND INTER-COUNTY	)	
ENERGY CORPORATION FOR APPROVAL OF	)	CASE NO.
AN INDUSTRIAL POWER AGREEMENT WITH	)	2020-00193
ECONOMIC DEVELOPMENT RIDER AND	)	
RENEWABLE ENERGY PURCHASES	)	

TESTIMONY OF DAVID CREWS
SENIOR VICE PRESIDENT OF POWER SUPPLY
EAST KENTUCKY POWER COOPERATIVE, INC.

June 26, 2020

TABLE OF CONTENTS

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is David Crews and my business address is East Kentucky Power Cooperative, Inc. ("EKPC"), 4775 Lexington Road, Winchester, Kentucky 40391. I am Senior Vice President of Power Supply at EKPC.

Q. Please state your education and professional experience.

A. I hold a Bachelor's degree in Civil Engineering from North Carolina State University and am a registered professional engineer in North Carolina. Prior to joining EKPC, I served as Manager of Federal Regulatory Affairs at Progress Energy Service Co. I also served as the Director of Coal Marketing and Trading for Progress Fuels, and as Director of Power Trading Operations at Progress. I began working at EKPC in January of 2011. In all, I have more than 39 years of experience in the electric utility industry.

Q. Please provide a brief description of your duties at EKPC.

A. Generally, I oversee EKPC's Power Supply, which includes the areas of Power Supply Planning, Load Forecasting, PJM Interconnection, LLC ("PJM") Market Operations, Fuel Supply, Renewable Energy Projects, Demand Side Management and Energy Efficiency.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I will begin by providing a brief overview of the two Joint Applicants – EKPC and Inter-County Energy Cooperative Corporation ("Inter-County"). Next, I will describe our counterparty – Diageo Americas Supply, Inc. ("Diageo") – and the project it is developing in Marion County, Kentucky. Finally, I will provide a detailed description of the Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases.

Q. ARE YOU SPONSORING ANY EXHIBITS?

A. There are no exhibits attached to my testimony, however, consistent with the Commission's Finding No. 6 in its September 24, 1990 Order in Administrative Case 327, the Joint Applicants are submitting a Marginal Cost Analysis as Exhibit 4 to the Application. This document was prepared at my direction and subject to my supervision.

II. THE JOINT APPLICANTS

Q. PLEASE DESCRIBE EKPC.

A. EKPC is a not-for-profit, rural electric cooperative corporation established under KRS Chapter 279 with its headquarters in Winchester, Kentucky. Pursuant to various agreements, EKPC provides electric generation capacity and electric energy to its sixteen (16) Owner-Member Cooperatives ("owner-members"), which in turn serve approximately 535,000 Kentucky homes, farms and commercial and industrial establishments in eighty-seven (87) Kentucky counties. EKPC's Board has stated its strategic objective is to maintain a generation fleet that prudently diversifies its fuel sources while maximizing its capital investments and minimizing stranded assets. Though I am not a lawyer, I understand that EKPC is both a "utility" and a "generation and transmission cooperative" as those terms are defined in Kentucky law.

In total, EKPC owns and operates approximately 2,965 MW of net summer generating capability and 3,267 MW of net winter generating capability. EKPC owns and operates coal-fired generation at the John S. Cooper Station in Pulaski County, Kentucky (341 MW) and the Hugh L. Spurlock Station (1,346 MW). EKPC also owns and operates natural gas-fired generation at the J. K. Smith Station in Clark County, Kentucky (753 MW (summer)/989 MW (winter)) and the Bluegrass Station in Oldham County, Kentucky (501 MW (summer)/567 MW (winter)), landfill gas-to-energy facilities in Boone County, Laurel County, Greenup County, Hardin County, Pendleton County and Barren County (16 MW total), and a Community Solar facility (8 MW) in Winchester, Kentucky. Finally, EKPC purchases hydropower from the Southeastern Power Administration at Laurel Dam in Laurel County, Kentucky (70 MW), and the Cumberland River system of dams in Kentucky and Tennessee (100 MW). EKPC's record peak demand of 3,507 MW occurred on February 20, 2015.

EKPC owns 2,967 circuit miles of high voltage transmission lines in various voltages. EKPC also owns the substations necessary to support this transmission line infrastructure. Currently, EKPC has seventy-four (74) free-flowing interconnections with its neighboring utilities. EKPC's transmission system is operated by PJM, of which EKPC has been a fully integrated member since June 1, 2013. PJM is a regional electric grid and market operator with operational control of over 180,000 MW of regional electric generation. It operates the largest capacity and energy market in North America.

Q. Please describe Inter-County.

A. Inter-County is a not-for-profit, member-owned, rural electric distribution cooperative organized under KRS Chapter 279. Inter-County is engaged in the business of distributing retail electric power to approximately 26,000 members in the Kentucky counties of Boyle, Casey, Garrard, Larue, Lincoln, Madison, Marion, Mercer, Nelson, Rockcastle, Taylor and Washington Counties. It maintains 3,985 miles of distribution lines and has a member density of approximately 6.6 members per mile. I also understand that Inter-County is a "utility," a "distribution cooperative" and a "retail electric supplier" under Kentucky law. Inter-County is one of the sixteen (16) Owner-Members of EKPC.

III. DESCRIPTION OF THE LEBANON PROJECT

Q. WHAT CAN YOU TELL US ABOUT DIAGEO AMERICAS SUPPLY, INC.

A. Diageo Americas Supply, Inc. is part of larger corporate family that all falls under the leadership of Diageo, plc, a company based in London in the United Kingdom. Diageo, plc is a global leader in beverage alcohol with a collection of iconic brands including Johnnie Walker, Crown Royal, Bulleit and Buchanan's whiskies, Smirnoff, Cîroc and Ketel One vodkas, Captain Morgan, Baileys, Don Julio, Tanqueray and Guinness. Diageo, plc is listed on both the New York Stock Exchange (NYSE: DEO) and the London Stock Exchange (LSE: DGE) and its products are sold in more than 180 countries around the world. The company's economic impact in North America is significant with ten (10) domestic production facilities across the United States, Canada and the US Virgin Islands. The company employs approximately 2,600 employees and spends more than $800 million a year on goods and services, all while making major investments in innovation and sustainability. Diageo Americas Supply, Inc. is no stranger to Kentucky as it already owns and operates a large distillery near Shelbyville, Kentucky.

Q. PLEASE DESCRIBE THE PROJECT THAT IS THE SUBJECT OF THE AGREEMENT BEING SUBMITTED TO THE COMMISSION FOR ITS REVIEW AND APPROVAL.

A. Diageo proposes to build a distillery in the Ky. Hwy. 208 Industrial Park near the City of Lebanon in Marion County, Kentucky (the "Lebanon Project"). The Lebanon Project represents a significant expansion of Diageo's Kentucky presence and will supplement the company's existing distillery in Shelby County, Kentucky. The Lebanon Project represents an approximate investment of $130 million and will create several dozen construction jobs and approximately thirty (30) permanent jobs. The Lebanon Project has a contract demand of 32 MWs, once fully operational. In furtherance of Diageo's corporate sustainability goals, the fully operational Lebanon Project will obtain one hundred percent (100%) of its energy requirements from renewable sources – either the purchase of renewable energy or the purchase and retirement of renewable energy credits ("RECs"). The Lebanon Project is expected to begin initial operations in early 2021 with full-scale operations occurring in July 2021.

Q. DOES DIAGEO HAVE ANY SUSTAINABILITY GOALS FOR THE LEBANON PROJECT?

A. Yes. The Commission is undoubtedly aware of the growing trend among many corporations to identify and achieve certain sustainability goals as part of their business. At the outset of the discussions that led to the negotiation of the Agreement attached to the Joint Applicants' Application, Diageo made it very clear that sustainability was a key factor in its decision to invest in the Lebanon Project.

Diageo's business relies on the careful stewardship of natural resources from "grain to glass" for its long-term success. From the fields in which raw materials are grown, to the water and energy used to make its products, Diageo depends on resources that it shares with the communities around it – just as Diageo also shares the impacts that result from these resources becoming constrained. Accordingly, Diageo is committed to addressing the following environmental challenges: climate change, water scarcity, soil degradation and the loss of biodiversity. Diageo is working, for its own benefit, as well as for the future of those around it, to use natural resources efficiently across the company's whole value chain and, wherever possible, have a positive impact on the environment. Diageo prides itself on having relied upon responsible environmental stewardship for generations. Nonetheless, the company continues to strive towards building on its longstanding commitment to preserving the natural environment, to ensure the continuing viability of the resources and communities that help it create value.

Q. HAVE THE JOINT APPLICANTS HELPED DIAGEO ACHIEVE ITS SUSTAINABILITY GOALS?

A. We believe that we have. The Agreement is unique in that it is the first contract to be entered into following the Commission's recent approval of modifications to EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County's Rate Renewable Energy Program. We believe we have helped tailor a customized solution that allows Diageo to fulfill its corporate sustainability objectives without forcing other customers to subsidize Diageo's efforts. We believe that this approach will be a model for other corporate customers who seek to pursue similar sustainability objectives.

III. THE INDUSTRIAL POWER AGREEMENT

A. Overview

Q. THIS AGREEMENT IS DIFFERENT THAN OTHER INDUSTRIAL POWER AGREEMENTS THAT EKPC HAS PREVIOUSLY SUBMITTED TO THE COMMISSION. CAN YOU EXPLAIN THAT?

A. In many cases, EKPC and one of its Owner-Members will enter into an Industrial Power Agreement to serve a customer with a unique load profile. In some cases – three before now – those agreements have also included an economic development rate component. When the Commission approved EKPC's revised Rate H – Wholesale Renewable Energy Program, however, it opened up a whole new way to approach industrial power agreements. For those customers who have sustainability goals, the industrial power agreement is a good baseline for adding in the green energy components. In this case, the economic development rate provisions also applied. Thus, instead of presenting three separate agreements for Commission review and approval, the Joint Applicants were able to negotiate a single agreement that accomplishes multiple purposes.

Q. WHAT UNDERLYING RATE TARIFFS WILL APPLY?

A. The Diageo Agreement builds off the following rate tariffs: (1) EKPC's (a) Rate G- Special Electric Contract Rate; (b) Rate EDR – Economic Development Rider; (c) Rate H – Wholesale Renewable Energy Program; and (d) Rate CS – Community Solar; and (2) Inter-County's (a) Rate G – Large Industrial Customer; (b) Rate

Economic Development Rider; (c) Rate Renewable Energy Program; and (d) Rate CS – Community Solar Power Generation.

Q. WHY ARE THE JOINT APPLICANTS REQUESTING COMMISSION APPROVAL BE GRANTED ON OR BEFORE NOVEMBER 30, 2020?

A. Paragraph 29 of the Agreement gives any party to the Agreement the right to void the contract in the event that Commission approval is not received by that date. While we would not expect that to occur, it is important for all parties to have certainty with regard to the cost of energy for any project as large as the Lebanon Project. In the event the Agreement was not approved by November 30, 2020, the parties would be forced to scramble to negotiate a new agreement prior to Diageo's planned operational date in early 2021. This would be far from ideal.

B. Green Energy Purchases

Q THE AGREEMENT HAS SEVERAL PROVISIONS CONCERNING THE PROVISION OF GREEN ENERGY TO DIAGEO TO ASSURE THAT IT IS ABLE TO MEET ITS SUSTAINABILITY GOALS. PLEASE DESCRIBE HOW THIS WILL WORK.

A. Diageo will begin by making a substantial investment in the Community One Solar Facility in Winchester. Per Appendix A of the Agreement, Diageo intends to lease three hundred thirty (330) solar panels which will provide it with an immediate supply of both renewable energy and RECs. The balance of its green energy purchases is described in Paragraph 4(a). In short, the plan is to meet Diageo's needs with REC purchases through its initial start-up and tuning period. Once Diageo moves toward full production, EKPC will purchase renewable energy for

Diageo. As the Lebanon Project moves into full production, most of the green energy will be supplied by energy purchases with REC purchases used to make up the difference.

Q. HOW WILL THE SOURCE(S) OF GREEN ENERGY SUPPLIED TO DIAGEO BE DETERMINED?

A. The process for determining where to source green energy is spelled out in Paragraph 4(b) and Appendix A of the Agreement. At a high level, the parties will meet to fully understand Diageo's goals for sourcing renewable energy. Although the ultimate decision is left to EKPC, we will be responsive to the customer's preferences to the greatest extent possible. EKPC intends to undertake a request for proposal process to identify and source renewable energy to serve the Diageo load. Whether that involves physical facilities or just energy purchases remains to be seen. EKPC is working with the National Renewable Cooperative Organization, as it did when it developed the Community Solar project, to efficiently and effectively source the reasonable, least-cost green energy supply option(s).

Q. WILL EKPC BE CONSTRUCTING ANY RENEWABLE ENERGY FACILITIES TO SERVE THE DIAGEO LOAD?

A. EKPC has the ability to submit a self-supply option. If it chose to do so – which has not been determined – it would follow the same internal safeguards that it undertook with regard to prior projects where a self-supply option was considered to maintain the integrity of the bidding and submission evaluation process.

Q. WILL COMMISSION APPROVAL BE REQUIRED FOR ANY GREEN ENERGY PURCHASES NECESSARY TO SUPPLY DIAGEO?

A. Until we know the nature of the contemplated purchases, it is not possible to answer that question definitively. Nevertheless, EKPC would expect that Commission approval might be required for such an energy purchase. The Diageo Agreement specifically contemplates this in Paragraph 4(f).

Q. WILL INTER-COUNTY'S OTHER MEMBERS, OR EKPC'S OTHER OWNER-MEMBERS, BE SUBSIDIZING DIAGEO'S GREEN ENERGY PURCHASES?

A. No. In accordance with EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County's Rate Renewable Energy Program, the Agreement is designed to assure that all incremental costs associated with green energy purchases and REC purchases are assumed by the customer. Both tariffs were designed to prevent cost-shifting and the Agreement affirms that intention.

C. Economic Development Rates

Q. THE AGREEMENT INCLUDES AN ECONOMIC DEVELOPMENT RATE COMPONENT, CORRECT?

A. Yes. Due to the extent of its investment and job creation, Diageo's Project was a good candidate for use of the Joint Applicants' economic development rate tariffs.

Q. ARE YOU FAMILIAR WITH THE REQUIREMENTS FOR ECONOMIC DEVELOPMENT RATES IN KENTUCKY?

A. Yes. The Commission provided guidance as to how economic development rates should be offered and applied in Administrative Case No. 327. The Final Order in that case includes several guidelines which regulated utilities should consider and follow in offering and implementing their economic development rate tariffs. I am also aware that the Kentucky Supreme Court specifically affirmed the Commission's approval of economic development rates in 2010. Closer to home, EKPC has previously presented two applications for the approval of economic development rates in Case No. 2014-00034 and Case No. 2016-00316. In both cases, the Commission approved EKPC's application. Additional contracts with an economic development rate included have been filed and approved through the Commission's tariff filing system.

Q. DOES THE PROPOSED AGREEMENT WITH DIAGEO COMPLY WITH THE COMMISSION'S GUIDELINES IN ADMINISTRATIVE CASE 327?

A. Yes. In negotiating the Agreement, we were careful to comply with each of the Commission's requirements.

Q. FINDING 3 IN THE ADMINISTRATIVE CASE 327 ORDER REQUIRES AN ECONOMIC DEVELOPMENT RATE TO BE APPLIED WITHIN THE CONTEXT OF A SPECIAL CONTRACT NEGOTIATED BETWEEN THE UTILITIES AND THEIR LARGE INDUSTRIAL CUSTOMER. HAS THAT HAPPENED HERE?

A. Yes. The Agreement attached to the Joint Applicant's Application was negotiated by the Joint Applicants and Diageo and represents the final product of the parties' negotiation of economic development rates.

Q. FINDING 4 OF THE ADMINISTRATIVE CASE 327 ORDER REQUIRES A WRITTEN SPECIAL CONTRACT INVOLVING ECONOMIC DEVELOPMENT RATES TO INCLUDE CERTAIN TERMS. DOES THE DIAGEO AGREEMENT INCLUDE EACH OF THE REQUISITE TERMS?

A. Yes. This particular finding requires inclusion of the following terms, at a minimum, in an economic development rate special contract: the applicable rate discount and other discount provisions; the number of jobs and capital investment to be created as a result of the project underlying the economic development rates; customer-specific fixed costs associated with serving the customer; the minimum bill calculation; estimated load; estimated load factors; and the length of the contract. This information is all included in Paragraphs 1, 3 and 5 of the Agreement.

Q. FINDING 5 OF THE FINAL ORDER IN ADMINISTRATIVE CASE 327 REQUIRES AN ECONOMIC DEVELOPMENT SPECIAL CONTRACT TO ONLY BE OFFERED DURING PERIODS OF EXCESS CAPACITY. IS THAT REQUIREMENT SATISFIED IN THIS CASE?

A. Yes. As an initial matter, Finding 5 is not applicable to Inter-County as it is a purely distribution cooperative and does not own any generation. As a generation and transmission cooperative, EKPC’s reserve margins are derivative of its participation in the capacity market operated by PJM. As the Commission is aware, PJM maintains an Installed Reserve Margin ("'IRM'") requirement that is typically around fifteen percent (15%) of its summer peak, and EKPC is required to maintain *or* purchase its pro-rata share of this IRM. The diversity of EKPC's load as compared to the PJM load provides additional margin for EKPC. That is, the EKPC load at the time of the PJM peak is typically less than the EKPC peak load. Therefore, EKPC's relative percentage of reserve margin that it carries on its peak load is significantly less than the overall PJM IRM. The typical EKPC capacity requirement, as defined by PJM, represents close to a three percent (3%) reserve margin on the EKPC projected summer peak. EKPC showed the expected required reserve margins based on this estimation in its 2019 Integrated Resource Plan, which is currently pending. As a participant in the PJM markets, EKPC sells all its generating resources into the market and purchases all its load requirements, including the reserve margin. Based on current conditions, EKPC does not believe it will be necessary to make a specific market purchase to cover the new demand created by the Lebanon Project during the Agreement's term. However, Paragraph 5(c) of the Agreement includes a provision to address a specific capacity market purchase, if needed. Based on the foregoing, the Joint Applicants are fully compliant with Finding 5.

Q. FINDING 6 IN THE COMMISSION'S ORDER IN ADMINISTRATIVE CASE 327 REQUIRES THE SUBMISSION OF A MARGINAL COST ANALYSIS THAT DEMONSTRATES THAT THE DISCOUNTED RATE EXCEEDS THE MARGINAL COST, FOR BOTH CAPACITY AND ENERGY, ASSOCIATED WITH SERVING THE CUSTOMER. HAVE THE JOINT APPLICANTS PREPARED SUCH AN ANALYSIS?

A. Yes. As I mentioned previously, the Joint Applicants are submitting the required Marginal Cost Analysis as Exhibit 4 to the Application. This document was finalized on May 31, 2020, which is well within the acceptable one-year window preceding the Agreement's May 28, 2020 date. The Marginal Cost Analysis was prepared at my direction and subject to my supervision.

Q. WHAT WAS THE RESULT OF EKPC'S MARIGINAL COST ANALYSIS?

A. Using recent capacity pricing and energy pricing from PJM, EKPC compared the market demand and energy pricing with the demand and energy rates that will be charged to Diageo. For capacity demand, the historic period relied upon for PJM pricing was the PJM Delivery Year that ended on May 31, 2020. A historical analysis of demand demonstrated that the economic development rates offered in the Diageo Agreement yielded a discounted demand rate that exceeded the marginal cost of capacity as set in PJM's Base Residual Auction ("BRA") in each year of the discount period. EKPC also performed an alternative analysis of demand using future BRA pricing based upon PJM's 2021-22 Delivery Year, which is the year for which the most recent data is available. Under this analysis, the discounted demand rate charged to Diageo was less than the capacity price established by the BRA for 2021-22 in the first two years of the discount period and higher in the last three years of the discount period. Overall, the total discounted demand exceeded marginal costs over the full discount period.

For energy, EKPC relied upon the average monthly market purchase rate from PJM during the 2019-2020 Delivery Year and compared this to the tariffed rate for Rate G – Special Electric Contract Rate (net of the applicable Fuel Adjustment Clause adjustment). This analysis demonstrated that the tariffed Rate G energy rate exceeded the cost of market purchases, which is the marginal cost for energy, in each month of the 2019-2020 Delivery Year. Thus, the tariffed Rate G energy rate also satisfies the Commission's marginal cost requirement.

Q. FINDING 7 OF THE FINAL ORDER IN ADMINISTRATIVE CASE 327 REQUIRES A UTILITY WITH ACTIVE ECONOMIC DEVELOPMENT

RATE SPECIAL CONTRACTS TO FILE ANNUAL REPORTS DETAILING REVENUES RECECIVED FROM AN ECONOMIC DEVELOPMENT RATE CUSTOMER AND THE MARGINAL COSTS ASSOCIATED WITH SERVING THAT CUSTOMER. WILL THE JOINT APPLICANTS ABIDE BY THIS FINDING?

A. Yes. EKPC already files this type of annual report for each of the economic development special contracts that are currently active on behalf of itself and its participating Owner-Members. Should the Commission approve the Diageo Agreement, EKPC proposes to file the report detailing revenues received from Diageo and the marginal costs associated with serving this customer on or before March 31st of each year.

Q. FINDING 8 OF THE FINAL ORDER IN ADMINISTRATIVE CASE 327 REQUIRES A UTILITY WITH AN ACTIVE ECONOMIC DEVELOPMENT RATE CONTRACT TO DEMONSTRATE IN THE COURSE OF A RATE PROCEEDING THAT NON-PARTICIPATING RATEPAYERS ARE NOT ADVERSELY AFFECTED BY THE ECONOMIC DEVELOPMENT SPECIAL CONTRACT CUSTOMER. WILL THE JOINT APPLICANTS BE ABLE TO DO THIS IF THE APPLICATION IS APPROVED?

A. Yes. The Joint Applicants prepare detailed cost of service studies as part of any rate filing. Based upon the provisions that are included in the Diageo Agreement, the Joint Applicants should have no trouble demonstrating that non-participating ratepayers are not adversely affected by the special contract. In fact, other ratepayers should benefit over the long-term in the sense that the Joint Applicants' fixed costs will be spread over a larger load.

Q. DOES THE DIAGEO AGREEMENT INCLUDE A SPECIFIC PROVISION PROVIDING FOR THE RECOVERY OF CUSTOMER-SPECIFIC FIXED COSTS OVER THE LIFE OF THE CONTRACT AS REQUIRED BY FINDING 9 OF THE FINAL ORDER IN ADMINISTRATIVE CASE 327?

A. Yes. At this time, there are no specific customer-specific fixed costs that need to be recovered from EKPC's point of view. I understand that Diageo may desire to have Inter-County purchase, store and maintain a spare transformer. If that happens, it would be treated as a customer-specific fixed cost and handled directly between those two parties. Regardless, Paragraph 5(d) of the Diageo Agreement provides that "any additional EDR customer-specific fixed costs shall be recovered over the Initial Term of the Agreement."

Q. FINDING 10 IN THE COMMISSION'S ORDER IN ADMINISTRATIVE CASE 327 INDICATES THAT THERE IS NO SPECIFIC JOB CREATION OR INVESTMENT THRESHOLD FOR AN ECONOMIC DEVELOPMENT SPECIAL CONTRACT BUT THAT "THE MAJOR OBJECTIVES OF EDRS ARE JOB CREATION AND CAPITAL INVESTMENT." IS THE DIAGEO AGREEMENT CONSISTENT WITH THIS FINDING?

A. Yes. Per the Agreement, Diageo will create over thirty new jobs, plus temporary construction jobs, and make an initial capital investment of approximately $130 million. This is a major investment in Marion County.

Q. SIMILAR TO THE REQUIEMENT OF FINDING 7, FINDING 11 IN THE COMMISSION'S FINAL ORDER IN ADMINISTRATIVE CASE 327 REQUIRES THE FILING OF AN ANNUAL REPORT IN A PRESCRIBED FORM FOR EACH ACTIVE ECONOMIC DEVELOPMENT SPECIAL CONTRACT. WILL THE JOINT APPLICANTS COMPLY WITH THIS REQUIREMENT?

A. Yes. On or before March 31st of each year, EKPC will file on behalf of itself and Inter-County an annual report in the Commission's prescribed format. EKPC already does this for its other existing active economic development rate special contracts.

Q. FINDING 12 OF THE FINAL ORDER IN ADMINISTRATIVE CASE 327 APPLIES TO THE LOAD TO WHICH AN ECONOMIC DEVELOPMENT RATE SHOULD BE APPLIED. WILL THE JOINT APPLICANTS COMPLY WITH THIS REQUIREMENT?

A. Finding 12 stated that for new industrial customers, an economic development rate should apply only to load which exceeded a minimum base level. The Commission required that, at the time an economic development rate special contract was filed, the minimum usage level required for a new customer should be identified and justified. In Case No. 2014-00034 EKPC proposed to apply the EDR discounts to a qualifying new customer's entire load instead of an incremental load over a certain threshold amount. In the June 20, 2014 Order the Commission granted a waiver of the original requirement, noting that all of the load of a new customer would be incremental usage over and above what was included in EKPC's last rate case and that EKPC's proposed load parameters as they related to applying the EDR discounts would not disadvantage other customers. The special contract with Diageo applies the EDR discounts to the entire new load. Thus, the Diageo Agreement is consistent with Finding 12 as adjusted by the Commission's Order in Case No. 2014-00034.

Q. DOES FINDING 13 FROM THE COMMISSION'S FINAL ORDER IN ADMINISTRATIVE CASE 327 APPLY IN THIS CASE?

A. No. Finding 13 applies only in the context of an existing customer who would take load off a utility's system unless an economic development rate is provided to retain the load. Since Diageo is a new customer for Inter-County and the Lebanon Project is new to the EKPC system, Finding 13 has no application in this context.

Q, FINDING 14 REQUIRES THE TERM OF AN ECONOMIC DEVELOPMENT SPECIAL CONTRACT TO BE FOR A PERIOD OF AT LEAST TWICE THE PERIOD OF THE DISCOUNT PERIOD, WHICH ITSELF SHALL NOT EXCEED FIVE YEARS. DOES THE DIAGEO AGREEMENT COMPLY WITH THIS REQUIREMENT?

A. Yes. The discount period is five years and the total Initial Term of the Diageo Agreement is fifteen years.

Q. WHAT RATES WILL DIAGEO PAY FOR THE NON-DISCOUNT PERIOD OF THE AGREEMENT?

A. Consistent with Finding 14, Diageo will pay the rates charged to other customers in Inter-County's Rate G – Large Industrial Customer.

Q. DOES EITHER FINDING 15 OR FINDINNG 16 FROM THE FINAL ORDER IN ADMINISTRATIVE CASE NO. 327 APPLY IN THIS CASE?

A. No. Both of those findings related to natural gas utilities offering a discount or waiver of the cost of a gas main extension. They are not applicable to this case.

Q. FINDING 17 OF THE COMMISSION'S FINAL ORDER IN ADMINISTRATIVE CASE 327 ALLOWS THE ECONOMIC DEVELOPMENT CABINET AND ANY OTHER INTERESTED PARTY TO FILE COMMENTS ON THE PROPOSED SPECIAL CONTRACT WITHIN 20 DAYS FOLLOWING THE FILING OF THE APPLICATION. HAVE THE JOINT APPLICANTS GIVEN NOTICE OF THE APPLCIATION TO THE ECONOMIC DEVELOPMENT CABINET OR ANYONE ELSE?

A. Yes. Contemporaneous with filing the Application, the Joint Applicants are providing the Economic Development Cabinet and the Office of the Attorney General copies of the Application.

Q. ARE YOU AWARE OF ANY OTHER REQUIREMENTS PERTAINING TO ECONOMIC DEVELOPMENT RATE SPECIAL CONTRACTS?

A. No.

Q. IS IT YOUR OPINION THAT THE DIAGEO AGREEMENT SATSIFIES ALL REQUIREMENTS FOR ECONOMIC DEVELOPMENT RATE SPECIAL CONTRACTS?

A. Yes. The Agreement complies with all guidelines and requirements of which I am aware.

D. Other Considerations

Q. YOU TOUCHED UPON THIS EARLIER, BUT ARE THERE BENEFITS TO THE COMMUNITY THAT ARE ASSOCIATED WITH THE LEBANON PROJECT?

A. There most certainly are benefits for the entire community. We understand that the Lebanon Project will have a significant positive impact upon the local community by creating several dozen construction jobs and approximately thirty (30) permanent jobs once production is fully underway. These jobs will translate into higher occupational licenses taxes for the community. Moreover, with a total investment of approximately $130 million, the Lebanon Project will add significant value to the local property tax base. As a distiller of alcohol beverages, Diageo will also be subject to additional wholesale, retail and excise taxes applicable to alcohol producers. All of this will inure to the benefit of local schools, local agencies and state government. Based upon Diageo's track record with its operations in Shelby County, I am confident that Diageo will be a constructive partner in the local Marion County community and will provide a financial engine to generate greater overall economic activity. The community benefits of the Lebanon Project are clear and manifest.

Q. ARE YOU FAMILIAR WITH ANY RECENT COMMISSION ORDERS ON SPECIAL CONTRACTS INVOLVING THE SALE OF RENEWABLE ENERGY TO A UTILITY'S CUSTOMERS?

A. I am familiar with the Commission's May 8, 2020 Order in Case No. 2020-00016. It ruled upon the question of whether Kentucky Utilities Company and Louisville

Gas & Electric Company could: (1) enter into purchase agreements with a solar developer; (2) enter into special contracts to sell seventy-five percent (75%) of the solar power from the purchase agreement to two large customers with corporate sustainability objectives; and (3) amend their Green Tariffs.

Q. IS THERE ANYTHING ABOUT THE COMMISSION'S MAY 8TH ORDER OR JUNE 18TH ORDER IN CASE NO. 2020-00016 THAT MIGHT BE RELEVANT TO THE JOINT APPLICANTS' APPLICATION?

A. There are some general similarities in that the Joint Applicants desire to help a large industrial customer achieve its sustainability goal by selling renewable energy and RECs to the customer. The Joint Applicants, however, do not need to amend their renewable energy tariffs in light of the fact that amendments previously approved by the Commission are sufficient to encompass what is being proposed here. Also, EKPC is not seeking approval to enter into any renewable energy purchase agreements or to construct additional renewable energy facilities at this time, although, as mentioned previously, it is possible that such a request may be made in the future.

I would also point out that the Commission's May 8th Order in Case No. 2020-00016 was very clear with regard to the Commission's expectations for how special contracts with customers seeking to achieve sustainability goals should be crafted. The Order states:

> As an initial matter, the Commission agrees that renewable energy resources should be available for corporations with sustainability goals as one of the economic development tools that convey that Kentucky is open for business. This position was primary basis of our decision to approve

> LG&E/KU's Greet [sic] Tariff provisions as presented and supported in LG&E/KU's 2018 rate cases. Nevertheless, the Commission adds the caveat that special contracts entered into to promote corporate sustainability goals should ensure that non-participating customers are no worse off than if the special contracts for renewable energy did not exist. Non-participating customers must not bear additional costs that arise from a jurisdictional utility's actions in attempting to meet a corporation's own self-imposed sustainability goal.

In particular, the Commission appeared to be concerned with a provision in the special contracts that reduced the customers' intermediate and peak demand charges by coincident solar energy production as this would have the effect of shifting the cost of the utilities' existing demand costs to non-participating customers. The June 18th Order emphasized this point again.

Q. WOULD THE SAME CONCERNS ARISE IN THE CONTEXT OF THE DIAGEO AGREEMENT?

A. No. The Diageo Agreement does not include a term whereby Diageo's demand charges are offset by coincident solar energy production.

Q. ARE THERE ANY PROTECTIONS FOR THE JOINT APPLICANTS IN THE EVENT THAT DIAGEO IS UNABLE TO PERFORM THROUGHOUT THE ENTIRE INITIAL TERM OF THE AGREEMENT?

A. Yes. There are early termination provisions that will apply in the event that Diageo is, for some unforeseen reason, unable to perform throughout the entire Initial Term. For instance, Paragraph 4(e) includes an early termination provision that applies to Diageo's obligations to purchase renewable energy and RECs. A similar early termination provision in Paragraph 5(f) applies to discounts afforded under the economic development rate portion of the Agreement.

In addition to these early termination payment obligations, the Joint Applicants are also protected through performance assurance requirements set forth in Paragraph 28 of the Agreement. These obligations require the parties to share financial information with one another and to post performance assurance in the event of various credit actions. This helps assure that no party carries a significant credit exposure throughout the entire term of the Agreement. We have also included a provision that allows Diageo's obligations to be shared with a Guarantor and an enhanced deposit feature to assure Inter-County's interests are protected in light of the significant addition of load to its system.

IV. CONCLUSION

Q. IS IT YOUR OPINION THAT THE DIAGEO AGREMEENT IS FAIR, JUST AND REASONABLE?

A. Yes. This represents a series of lengthy negotiations to arrive at an agreement that facilitates job creation and investment in Inter-County's service territory. Not only will this investment help the local economy, but each of EKPC's Owner-Members will benefit by spreading out fixed costs over a larger load over the long term.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Case No. 2020-00193
Exhibit 4

Marginal Cost Analysis
(May 31, 2020)

MARGINAL COST ANALYSIS

EKPC, Inter-County, and Diageo EDR Special Contract Application

Finding No. 6 of the Commission's September 24, 1990 Order in Administrative Case No. 327 states:

> Upon submission of each EDR contract, a utility should demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer. Marginal cost includes both the marginal cost of capacity as well as the marginal cost of energy. In order to demonstrate marginal cost recovery, a utility should submit, with each EDR contract, a current marginal cost-of-service study. A current study is one conducted no more than one year prior to the date of the contract.

EKPC fully integrated into PJM effective June 1, 2013 and participates in the Reliability Pricing Model ("RPM") capacity market. Under the RPM forward market construct, PJM annually conducts a Base Residual Auction ("BRA") in May for generation owners to make capacity available three years in advance of the delivery year and for load serving entities to buy capacity as needed for that delivery year. The capacity auction includes not only generation capacity but also demand response and transmission assets as resources. As a participant in RPM, EKPC bids its entire generation capacity into the market and receives the market price for that generation while simultaneously purchasing at the market price the generation needed to serve its load. EKPC also purchases its energy needs from the market.

The focus of marginal cost studies is on the estimated change in costs that results from providing an increment of service.[1] Given EKPC's participation in the PJM markets, it is reasonable to use the capacity and energy pricing from those markets as EKPC's marginal costs. This analysis compares the market demand and energy pricing with the demand and energy rates

[1] NARUC Electric Utility Cost Allocation Manual (Washington, DC: NARUC, January 1992), 18.

that EKPC will be charging for the service to the Diageo facility in Marion County. The historic demand analysis is based on pricing experienced during the PJM Delivery Year June 1, 2019 through May 31, 2020 while the historic energy analysis is based on pricing experienced during the billing month for the most recent 12-month period ending May 2020.

Marginal Cost Analysis – Demand

Diageo is currently constructing a new distillery, warehouse, and associated structures in Marion County, Kentucky. The contract demand when the EDR begins on July 1, 2022 is 32,000 kW. Diageo's application for an EDR applies to the total demand.

Historic Analysis. The historic marginal cost analysis for demand compares the BRA results for the PJM Delivery Year with the discounted demand rates for each of the five discount years. The BRA result for the 2019-20 Delivery Year was \$100.00 / MW-day. For the comparison, this price has to be restated as a rate per kW-month. The price is first multiplied by the days in the year. This product is then divided by 1,000 to convert to kW and further divided by 12 to reach a monthly rate. Thus,

$$\$100.00 \text{ / MW-day x } 366 \text{ days} \div 1{,}000 \div 12 = \$3.05 \text{ / kW-month}$$

The EDR discount will be applied to the demand rate which for EKPC's Rate G is \$6.98 / kW. The comparison of the discounted demand rates and the BRA results is shown below.

Discount Period	Demand Rate per kW – Rate G		
	Rate of \$6.98	BRA Results	Difference
1st Year – 50%	\$3.49	\$3.05	\$0.44
2nd Year – 40%	\$4.19	\$3.05	\$1.14
3rd Year – 30%	\$4.89	\$3.05	\$1.84
4th Year – 20%	\$5.58	\$3.05	\$2.53
5th Year – 10%	\$6.28	\$3.05	\$3.23

As shown in the table, the discounted demand rate is higher than the marginal cost (represented by the BRA results) for all of the discount periods covered in the EDR special contract. Based on this analysis the discounted demand rates for the contract exceed the historic marginal costs for the five-year discount period.

Alternative Analysis. EKPC performed a similar comparison for the discounted demand rates using the BRA results for future PJM Delivery Years. In this analysis, the 2022-23 PJM Delivery Year will be assumed to correspond to the first year of the discount period, since the special contract includes a provision delaying the start of the EDR discount period. The latest BRA results are for the 2021-22 Delivery Year which is just prior to the expected beginning of the EDR discount period. For this alternative analysis, the 2021-22 Delivery Year BRA results will be used for all the years of the discount period.

As discussed previously, the BRA results need to be restated from MW-day to kW-month. The following table shows the restated auction results.

Delivery Year	Corresponding EDR Discount Period	BRA Results, $ / MW-day	BRA Results, $ / kW-month
2022-23, 2024-25, 2025-26 & 2026-27	1st, 3rd, 4th, and 5th Years	$140.00	$4.26
2023-24	2nd Year	$140.00	$4.27
Notes: For Delivery Years 2022-23, 2024-25 through 2026-27 the Mw-day rate was multiplied by 365 days; for Delivery Year 2023-24 the multiplier was 366 days because of leap year.			

The comparison of the discounted demand rates and the BRA results under the alternative analysis is shown below.

Discount Period	Demand Rate per kW – Rate G		
	Rate of $6.98	BRA Results	Difference
1st Year – 50%	$3.49	$4.26	-$0.77
2nd Year – 40%	$4.19	$4.27	-$0.08
3rd Year – 30%	$4.89	$4.26	$0.63
4th Year – 20%	$5.58	$4.26	$1.32
5th Year – 10%	$6.28	$4.26	$2.02

As shown in the table, the discounted demand rate is lower than the marginal cost (represented by the BRA results) for the first two discount periods covered in the EDR special contract. To better understand the discounted contract demand rate results, the potential annual dollar impact of the results has been modeled based on the contract demand of 32,000 kW applicable for the EDR discount period.

Discount Period	Discounted Contract Demand Rate Revenues		BRA Results – Marginal Costs		Difference	
	Monthly Revenue	Annual Revenue	Monthly Cost	Annual Cost	Monthly	Annual
1st Year	$111,680	$1,340,160	$136,320	$1,635,840	-$24,640	-$295,680
2nd Year	$134,080	$1,608,960	$136,640	$1,639,680	-$2,560	-$30,720
3rd Year	$156,480	$1,877,760	$136,320	$1,635,840	$20,160	$241,920
4th Year	$178,560	$2,142,720	$136,320	$1,635,840	$42,240	$506,880
5th Year	$200,960	$2,411,520	$136,320	$1,635,840	$64,640	$775,680
Total Annual		$9,381,120		$8,183,040		$1,198,080

While the marginal cost was not "covered" by the discounted demand rate in the first two discount years, for the five-year discount period the potential demand rate revenues were greater than the potential marginal costs by $1,198,080.

Thus, under the alternative analysis, the marginal costs can be considered "covered" by the applicable discounted demand rate.

<u>Marginal Cost Analysis – Energy</u>

The historic marginal cost analysis for energy will compare the average monthly market purchase rate with the tariffed energy rate for Rate G net of the applicable fuel adjustment clause ("FAC") adjustment for the month. The comparison for the most recent 12-month period ending May 2020 is shown below.

Billing Month Ended	Energy Rate as $ per kWh				
	Rate G Tariffed Rate	Applicable FAC Rate	Net Energy Rate	Cost of Market Purchases	Difference
June 2019	$0.038467	-$0.003490	$0.034977	$0.024240	$0.010737
July	$0.038467	-$0.004830	$0.033637	$0.022570	$0.011067
August	$0.038467	-$0.005230	$0.033237	$0.023490	$0.009747
September	$0.038467	-$0.006120	$0.032347	$0.022810	$0.009537
October	$0.038467	-$0.005640	$0.032827	$0.022900	$0.009927
November	$0.038467	-$0.006590	$0.031877	$0.021660	$0.010217
December	$0.038467	-$0.001190	$0.037277	$0.025840	$0.011437
January 2020	$0.038467	-$0.005110	$0.033357	$0.022820	$0.010537
February	$0.038467	-$0.006540	$0.031927	$0.021330	$0.010597
March	$0.036947	-$0.007810	$0.029137	$0.018730	$0.010407
April	$0.036947	-$0.009170	$0.027777	$0.017070	$0.010707
May 2020	$0.036947	-$0.010190	$0.026757	$0.016460	$0.010297
Averages for the Current 12-month Period	$0.038087	-$0.005993	$0.032095	$0.021660	$0.010435

As shown in the comparison, the tariffed Rate G energy rate net of the FAC adjustment exceeded the cost of market purchases (marginal cost) in each month of the most recent 12-month billing period ending May 2020 and for the entire period on average. Based on this analysis, EKPC's energy rate exceeds the historical marginal costs.

Conclusion

EKPC believes that the marginal cost analyses adequately demonstrate that the discounted demand rates and the net energy rates that will be charged as part of the EDR special contract exceed the marginal costs of providing service. EKPC further believes that this marginal cost analyses satisfies the requirements of Finding No. 6 of the September 24, 1990 Order.